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ABSTRACT

Witnesses testified on the merits of the All Terrain Vehicle (ATV) User Safety and Equity Act, a bill that would declare three-wheel ATVs to be banned as hazardous products under the Consumer Product Safety Act, and would direct the Consumer Product Safety Commission (CPSC) to promulgate consumer product safety rules for ATVs. This act prohibits the sale of three-wheel ATVs, provides for a refund option to current owners, and requires that certain safety standards be formulated. Testimony concerns: (1) ways in which the consent decree on ATVs is inadequate; (2) reasons for supporting and opposing the bill; (3) the trauma of families enduring the consequences of an ATV accident; (4) the economic impact of several ATV recall options; (5) defects in the design of ATVs; (6) state responses to the danger ATVs pose to their citizens; (7) injuries to persons in ATV accidents; (8) ATV manufacturers' arguments that the bill is unwise, unconstitutional, and unprecedented; (9) ATV distributors' reasons for entering into the consent decree; (10) manufacturers' and distributors' support of conditions of the consent decree; and (11) questions about the implementation of the provisions of the decree. Also provided are extensive related materials submitted for the record. (RH)

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ALL TERRAIN VEHICLE SAFETY

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HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND COMPETITIVENESS

OF THE

COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 3991

A BILL TO DECLARE 3-WHEEL ALL TERRAIN VEHICLES TO BE BANNED HAZARDOUS PRODUCTS UNDER THE CONSUMER PRODUCT SAFETY ACT, TO DIRECT THE CONSUMER PRODUCT SAFETY COMMISSION TO PROMULGATE CONSUMER PRODUCT SAFETY RULES FOR ALL TERRAIN VEHICLES, AND FOR OTHER PURPOSES

MARCH 16, 1988

Serial No. 100-135

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ALL TERRAIN VEHICLE SAFETY

WEDNESDAY, MARCH 16, 1988

House of Representatives, Committee on Energy and
Commerce, Subcommittee on Commerce, Consumer
Protection, and Competitiveness,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2322, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. Florio. Good morning, the subcommittee will come to order. I would like to welcome all the attendants to our hearing this morning, at which time we will consider the bill, H.R. 3991, the ATV User Safety and Equity Act, an important piece of legislation that has been introduced by our colleague from Texas, Mr. Barton, who has played a very leading role in this committee's effort to address problems associated with ATV's. He introduced the bill with strong support, and we are looking forward to the witnesses comments on his bill.

On Monday, the Consumer Product Safety Commission, the Department of Justice, and the ATV Industry, filed a Final Consent Decree with the U. S. District Court. While the Consent Decree requires the ATV industry to take some first steps to address the serious safety issues associated with ATV's, such as providing users with warnings and free hands-on training, it is far from an adequate solution to the problem.

Since 1982, almost 1,000 people have been killed and 330,000 injured on ATV's; almost half were children under age 16. And for those who may wonder why we are here proposing legislation to deal specifically with ATV's, I would point out that during the average ATV's lifespan of 7 years, there is a one out of three likelihood that the ATV will cause its rider to suffer injury or death.

If a refrigerator or toaster or other similar consumer product had that kind of horrendous safety record, it would have been long since removed from the market.

The Consent Decree halts, at least temporarily, the sale of new three-wheel ATV's, but in my opinion that isn't good enough. It fails to provide any real protection for those who bought the admittedly dangerous three-wheelers in the past. The legislation before us, by requiring manufacturers to offer refunds to past purchasers of three-wheel ATV's, provides more adequate and appropriate relief.

We don't need fancy statistics or complicated mathematics to understand what basic common sense tells us. Offering past purchasers the opportunity to return their unsafe three-wheel ATV's will improve safety. Every dangerous, unstable three-wheeler removed from circulation reduces the risk of death and injury.

Not only does a refund remedy clearly improve safety, it also provides fairness to buyers who were effectively mislead into thinking they were buying a safe product when in fact the Commission has already made the decision that these products are inherently unstable and unsafe, such that they should be banned from future sale.

Indeed, all of the witnesses at this hearing including three of the Consumer Products Safety Commissioner's agree on this common sense remedy, with the exception of two obvious exceptions, representatives from the industry and apparently the Chairman of the Consumer Product Safety Commission.

We are looking forward to hearing the witnesses this morning who will testify on the merits of the bill of the gentleman from Texas, and we hope that we will be able to proceed in an expeditious way in dealing with this subject for the legislative process.

[The text of H.R. 3991 follows:]

100TH CONGRESS
2D SESSION

H. R. 3991

To declare 3-wheel all terrain vehicles to be banned hazardous products under the Consumer Product Safety Act, to direct the Consumer Product Safety Commission to promulgate consumer product safety rules for all terrain vehicles, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1988

Mr. BARTON of Texas (for himself, Mr. LENT, Mr. BARNARD, Mr. RINALDO, Mr. ECKART, and Mrs. COLLINS) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To declare 3-wheel all terrain vehicles to be banned hazardous products under the Consumer Product Safety Act, to direct the Consumer Product Safety Commission to promulgate consumer product safety rules for all terrain vehicles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "ATV User Safety and Equity Act".

SEC. 2. BAN OF 3-WHEEL ALL TERRAIN VEHICLES.

(a) Ban.—For purposes of the Consumer Product Safety Act, 3-wheel all terrain vehicles shall be considered banned hazardous products for which a rule was promulgated under section 8 of such Act, except that sales of such vehicles by other than manufacturers, distributors, or dealers shall not be prohibited.

(b) Refund.—The manufacturers of 3-wheel all terrain vehicles shall provide to persons who—

(1) before the date of the enactment of this Act, purchased 3-wheel all terrain vehicles, and

(2) return the vehicles to the manufacturer in accordance with regulations of the Consumer Product Safety Commission under paragraph (3),

a refund in an amount determined under such regulations.

(c) Procedure.—Not later than 180 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall promulgate a rule—

(1) prescribing the procedure for the return of 3-wheel all terrain vehicles for purposes of receiving the refund under subsection (b), and

(2) for determining the amount to be refunded under subsection (b).

(d) Sanction.—A manufacturer of 3-wheel all terrain vehicles who does not comply with subsection (b) shall be considered to have violated section 19(a)(5) of the Consumer Product Safety Act.

SEC. 3. CONSUMER PRODUCT SAFETY RULE FOR OTHER ALL TERRAIN VEHICLES.

(a) GENERAL RULE.—

(1) The Consumer Product Safety Commission shall promulgate under the Consumer Product Safety Act a consumer product safety rule for all terrain vehicles which will—

(A) require the manufacturers of all terrain vehicles to—

(i) offer free training in the operation of the vehicle to present and past purchasers and offer helmets and other protective equipment with the sale of the vehicle, and

(ii) provide notice, by warning stickers affixed to the vehicle and other appropriate means, to purchasers (including, to the extent feasible, prior purchasers) of the risk of injury or death presented by the vehicles, especially to children,

(B) require each manufacturer and distributor of all terrain vehicles to establish programs to ensure compliance by the dealer with the safety requirements of the rule, and

(C) require the retail dealers of all terrain vehicles to provide to purchasers safety information respecting the operation of the vehicles.

(2) The Consumer Product Safety Commission shall also promulgate under the Consumer Product Safety Act a consumer product safety rule for all terrain vehicles to improve the safety of the vehicle by prescribing—

(A) appropriate performance standards for the vehicle, and

(B) design characteristics.

(b) PROCEDURE.—

(1) The Commission shall publish a notice of proposed rulemaking for the consumer product safety rule under paragraph (1) of subsection (a) not later than the expiration of 45 days after the date of the enactment of this Act and shall promulgate the final rule within 180 days of such date. The Commission shall publish a notice of proposed rulemaking for the consumer product safety rule under paragraph (2) of subsection (a) not later than the expiration of 120 days after the date of the enactment of this Act and shall promulgate the final rule within 1 year of such date.

(2) If the Commission does not promulgate a rule under paragraph (2) of subsection (a) within 1 year of

such date, the Commission shall, upon the expiration of such year and until the date a rule under paragraph (2) of subsection (a) takes effect, be considered to have issued and placed into effect—

(A) a rule under section 8 of the Consumer Product Safety Act with respect to all terrain vehicles specifically designed for use by individuals under the age of 16, and

(B) a consumer product safety rule consisting of the text of the draft proposed safety standard provided to the distributors of all terrain vehicles in January 1988 pursuant to section L2 of the Preliminary Consent Decree of December 30, 1987, between the United States and the distributors of all terrain vehicles.

If upon review of a rule promulgated by the Commission under paragraph (2) of subsection (a) a stay of the rule is granted, any appeal by the Commission of such stay shall be advanced on the docket and expedited to the greatest possible extent.

(c) CONSTRUCTION.—Compliance with a consumer product safety rule promulgated under paragraph (1) or (2) of subsection (a) does not relieve any person from liability at common law or under State statutory law to any other person.

Mr. **Florio**. Let me at this point, recognize the gentleman from New Jersey, a very important member of this committee, Mr. Rinaldo.

Mr. **Rinaldo**. Thank you very much, Mr. Chairman. I want to commend you on holding this hearing today on this very important piece of legislation. There is no doubt that all terrain vehicles and their use in the United States is a subject matter of extreme importance. Perhaps no other product has received as much attention from the public. The reason for this is obvious.

Some 900 deaths and 330,000 injuries attributable to ATV's since 1982 is cause for alarm and consequently demands immediate attention. Three-wheel ATV's, perhaps the most dangerous ATV vehicle and ironically the most popular among teenagers, has accounted for almost two-thirds of all accidents.

While I support the efforts of the Consumer Product Safety Commission in trying to adopt the best solution to handle this problem, I believe the Consent Decree supported by a majority of the Commissioners, ATV manufacturers and the Justice Department, falls far short of what is needed. Although it covers significant safety and training requirements by manufacturers, it specifically does not address the future sales of three-wheel ATV's, the commercial sales of used three-wheel ATV's, or the concerns of owners who do not wish to keep these dangerous vehicles.

Consequently, the legislation before us today, H.R. 3991, sponsored by my colleague and good friend Mr. Barton, goes one step further in resolving the deficiencies of the agreement. It will prohibit the sales of three-wheel ATV's and provide for a refund option to current owners.

It also will require the CPSC to issue a product safety rule on performance standards and design characteristics with significant safeguards to prevent unnecessary delays in the implementation of the standards.

In my view, this measure would benefit those in society we seek to protect the most, and that's our young people. For this very important reason, I am an original co-sponsor of the measure. I want to thank the witnesses who have come today for their testimony, and look forward Mr. Chairman, to moving this bill out of this committee and over to the full committee.

I want to thank you again, Mr. Chairman, for holding this hearing and for your work in this very, very important piece of legislation and yield back the balance of my time.

Mr. **Florio**. Thank you. We are now pleased to hear from the chief sponsor of the legislation, a very hard working Congressman who has been particularly sensitive to this issue, Mr. Barton.

Mr. **Barton**. Thank you, Mr. Chairman. You are to be commended for holding this hearing and for encouraging me to introduce this legislation, H.R. 3991. I have a formal statement that I will submit for the record and simply summarize.

Mr. **Florio**. Without objection, so ordered.

Mr. **Barton**. We do have a long witness panel. The purpose of the bill, H.R. 3991, is to build on the Consent Decree that was signed this week between the Justice Department, The Consumer Product Safety Commission and the ATV manufacturers in this country.

It does three basic things. First, it bans permanently, sales of three-wheel ATV's. Second, it allows for refunds of those purchasers who wish a refund, but it doesn't mandate a recall; and any individual who wishes to keep their three-wheeler may do so; it does allow continued private person-to-person sales in the secondary market. It doesn't prohibit that. Third, it also requires that certain safety standards be formulated and has some guidelines for safety standards for four-wheelers that have been developed by the Consumer Products Safety Commission engineers.

It gives the industry and the Consumer Product Safety Commission up to 1 year to agree on those standards and modify those standards if they need to be modified, but in the event that no agreement can be reached at the end of that 1 year period, the standards in the bill would become law if, in fact, no agreement was reached.

So the bottom line of this legislation is simply to remove a vehicle from the American marketplace that is a killer machine. Over 900 people have been killed since 1982; over 300,000 have been injured, $1.5 billion in medical expenses have been incurred; people are still being killed at the rate of approximately 200 per year; and it is time to do something about it.

I think this is a concurrent piece of legislation that will add to what the Consumer Product Safety Commission has done, and American citizens especially our children, are going to be better for it. I encourage your support of it, and I am glad that we have the hearing today.

I am looking forward to hearing the testimony that we are going to receive.

[Mr. Barton's prepared statement follows:]

STATEMENT OF HON. JOE BARTON

Mr. Chairman, I want to commend you for holding this hearing today on my bill, H.R. 3991, the ATV User Safety and Equity Act. In that the Consent Decree was signed Monday and this bill addresses the omissions of the Decree, I believe this hearing is timely and necessary.

I believe the Justice Department's Settlement takes many positive steps in the right direction. The Settlement was too long in the making, but it is a victory for consumers. I applaud the Consumer Product Safety Commission and the Justice Department for the progress they made.

Having ATV companies stop selling three-wheelers, sending notices to past purchasers advising them of the dangers associated with the unstable machines, and offering free rider training to past and current purchasers of both three- and four-wheel vehicles are all positive steps.

However, the Consent Decree is not the final solution, nor does it address the totality of the issue. Some foreign manufacturers have claimed this Settlement is just a moratorium on ATV's and that nothing will really change. The Settlement is seriously deficient because it leaves open the possibility that ATV manufacturers may resume selling three-wheel ATV's. The Consent Decree is also silent on requiring refunds to purchasers of ATV's who desire one. The issue of minimum design safety and performance standards for the vehicles is not addressed in the decree.

ATV's were initially advertised and sold as a source of family fun and recreation. The three-wheel design associated in our culture with such safe things as tricycles and elderly walkers, misleads. So do the wide tires which allude to stability. Too often and for far too many families, the final destination of ATV "joy" rides are morgues and hospital emergency rooms.

Estimates indicate society has paid $1.6 billion for medical and death costs due to these inherently dangerous machines. This figure does not include the terrible price many families pay due to the permanent maiming or loss of their loved ones. We can no longer afford this debt. Our children, who are ill adept at assessing the risks involved, should not be endangered simply because they ride an inherently defective product.

The Consent Decree ban affects only future sales. It provides no incentive to remove three-wheelers already in use. Refunds should be available to those consumers who bought their ATV as a toy but did not recognize it could be a death machine. If an adult knows the dangers and chooses to keep and ride their three-wheel ATV, fine. But, to thousands of consumers who were deceived by manufacturers' advertisements into believing they had purchased a toy and now want some of their money back, a refund should be available.

This Act requires ATV manufacturers to offer refunds to all purchasers of three-wheel ATV's who want one. The legislation does not require anyone to return an ATV that they want to keep, nor does it ban possession of three-wheel ATV's. Its objective is to give ATV owners who wish to return their vehicles an opportunity to do so.

The Act further seeks to make future ATV's safe by entirely banning sales of three-wheel models. Four-wheel ATV's will be subject to CPSC mandated performance and safety standards. Sales of child-size models will be curtailed. All of these measures should substantially reduce the tragic death tolls and injuries which have been caused by ATV's in the past.

The CPSC has determined that ATV's present an imminent and unreasonable risk of death of serious injury. Since 1982, more than 900 ATV riders have been killed and 300,000 injured. Nearly half those killed and injured have been children. Twenty percent were under 12 years old at the time of the accident.

Only 61 people died before the Ford Pinto was recalled in 1978. Only 25 women died before Proctor & Gamble Co. removed a product from the market believed to be associated with toxic shock syndrome. Given these precedents, it is reasonable to conclude that too many have died and now is the time for prompt action on ATV's.

H.R. 3991 addresses the shortcomings of the Consent Decree. All four-wheel vehicles will be required to meet safety standards formulated by engineers of the CPSC. The sales of ATV's designed for use by persons under 16 would be banned.

A 1 year period is included in the bill during which time manufacturers and CPSC officials may agree to different safety standards than those in the bill. If agreement is not reached, the proposed standards will go into effect at the end of the 1 year time period.

In summary, Mr. Chairman, H.R. 3991 is the next logical step insuring the safe use of ATV's in the United States. It builds upon the Consent Decree by permanently banning three-wheel ATV's, allow for refund to purchasers of three-wheel ATV's, and sets safety standards for four-wheel ATV's.

I look forward to hearing the testimony of our witnesses today. Again, I commend you, Mr. Chairman, for holding this hearing.

Mr. **Florio**. Thank you very much. The gentleman from Utah.

Mr. **Nielson**. I have no prepared statement, but I do have some concerns about the bill that I will express when the time comes. It seems to me that the agreement signed by the CPSC and by the Justice Department and ATV manufacturers goes part way to what Mr. Barton wants to do. I am not sure we have to make it retroactive and I'm not sure we have to go back and defend people's unwise decisions to buy ATV's because this is not a new issue. This has been around for at least 4 years that I am aware of.

There is a lawsuit now pending seeking exactly the remedy for it, and the courts claims are going to be based on alleged false advertising. They are better pursued in the courts, in my view.

I also think that imposing the refund remedy when there has been no CPSC finding to that effect goes beyond Congress' purview. I have other comments that I will submit later on, when my turn comes.

Mr. **Florio**. Thank you very much. I recognize the gentleman from California for any statement he might make.

Mr. **Dannemeyer**. Thank you, Mr. Chairman. Mr. Larry Craig, our colleague from Idaho asked unanimous consent that he be permitted to file his statement. He is not here and if he would be permitted to file that statement at a later time, he has a real interest in this subject.

Mr. **Florio**. We will be pleased to receive from Mr. Craig, any statements he has.

[Statement of Hon. Larry Craig was received for the record.]

STATEMENT OF HON. LARRY E. CRAIG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

I appreciate this opportunity to comment on H.R. 3991, the ATV Safety and Equity Act. As many know, over the past two Congresses, I have carefully examined, vigorously debated, and then consciously considered the varying proposed solutions as to the best way of obtaining ATV safety. My sincere sympathy goes out to those who are victims of unforeseen circumstances while operating ATV's. For this reason, I have looked for remedies that will provide the most immediate and fair resolution for all ATV operators.

H.R. 3991, if enacted, would ban three-wheeled ATV's as hazardous products and direct the Commissioners of the Consumer Product Safety Commission (CPSC) to "promulgate" certain CPSC rules for ATV's. Although the bill represents good intentions and sincere concern for ATV operators, I cannot support it in its present form. H.R. 3991 inhibits the Consent Decree that could be made final between the CPSC and the ATV manufacturers pending approval of the court. In short, the settlement should be given a chance to work instead of being jeopardized by the pursuit of risky legislation.

On January 26, 1988, several of my colleagues joined me in sending a letter to the CPSC in support of the proposed settlement. I quote: "The proposed agreement is an effective and comprehensive settlement which we believe will serve to protect the consumer. Opponents of the preliminary Consent Decree believe that the consumer, who allegedly purchased ATV's without full knowledge of the risk of injury, should have the option of a refund. Although this refund is not included in the proposed agreement, the Commission has the right to pursue the refund program if it finds that the proposed resolutions are not effective in reducing accidents . . . [It is noted], however, that there has been a dramatic decline in the fatality and injury rates over the past year. The education and training programs required by this Consent Decree, coupled with the current trend, will hopefully make the need for a future refund program less likely. In addition, a consumer's right to seek recourse through the courts is not affected by this settlement. We believe this to be a fair and balanced approach. It is most important that immediate action in the form of a vigorous public awareness campaign to protect the consumer from unnecessary risk of death and injury will be accomplished by this agreement. . ."

I appreciate the fact that the CPSC and the ATV manufacturers have committed themselves to work together on a comprehensive approach to enhancing ATV operator safety. I hope they will continue to do so, and I hope Congress will allow them to do so by opposing H.R. 3991.

Mr. **Dannemeyer**. I have a statement here that I would like to place in the record. I won't read it, but I can relate to my colleagues that I look forward with interest in the testimony from the witnesses.

I have a casual interest in the subject matter, since probably most of you realize that the headquarters of Suzuki is located in that pristine area of Southern California. They have very enlightened leadership to have selected that area for their headquarters. So they have an abiding interest in what we are doing here.

I just hope that the representatives of the manufacturers will have an opportunity of presenting their side to this story. I note with interest that the members of the CPSC by a vote of two to one, have entered into a very extensive settlement agreement with the manufacturers of these vehicles. The court, I understand, has set a hearing for next month as to whether or not that settlement will be approved and whether or not we in Congress should super-impose our judgment beyond what the members of CPSC have done with respect to this issue is a very profound question.

I respect the views of our colleague from Texas, Mr. Barton, and I look forward to the testimony of the witnesses this morning.

[Mr. Dannemeyer's prepared statement follows:]

STATEMENT OF HON. WILLIAM E. DANNEMEYER

Mr. Chairman, I look forward to hearing today's testimony which I hope will present a balanced view of H.R. 3991, the ATV User Safety and Equity Act, introduced by my friend and colleague Mr. Barton whose views I respect and often share. On this issue, however, we disagree. Today we will have an opportunity to clarify our differing perceptions about the nature and degree of the problems surrounding ATV's. I have a strong interest in this hearing not only because one of the ATV manufacturers, U.S. Suzuki, is headquartered in my Congressional District but because many consumers live in Southern California and use these vehicles on the beaches and in the desert. I believe the CPSC, DOJ and ATV manufacturers reached a balanced and amicable agreement to promote ATV safety and rider education and that it is unnecessary and perhaps even inappropriate for Congress to intervene with legislation of this nature.

In September of 1986, the CPSC ATV Task Force presented the Commission with the regulatory recommendations that resulted from its extensive study of ATV safety issues. After a lengthy review, the Commissioners voted to file an imminent hazard lawsuit against the ATV manufacturers. The Task Force never supported or recommended a recall of ATV's and the Commission presumably rejected the recall approach when it decided not to use its recall authority (section 15, CPSA) in favor of litigation authority (section 12, CPSA). The CPSC, DOJ and ATV manufacturers finally agreed on a plan to essentially implement every recommendation made by the ATV Task Force in the form of the Consent Decree. The Federal Government has stopped the sale of new three-wheel ATV's and required the manufacturers to establish a program to repurchase those three-wheelers still in dealer inventories. There are those who don't believe that the decree goes far enough and believe that a refund is in order. However, it is important to note that the Final Consent Decree gives the Commission the right to pursue the refund program if it finds that the immediate resolutions are not effective in reducing accidents. Also, it is my understanding that the CPSC pledged in the agreement that it would not administratively seek mandatory ATV refunds for 1 year from the date the Courts approve the final decree. I question whether Congress should preempt the ATV industry's right to the due process of law and judicial review by mandating what the Government promised it would not pursue administratively.

It is my hope that a number of important issues are addressed in today's hearing on Mr. Barton's legislation which requires that ATV manufacturers provide refunds to consumers. I question whether three-wheel ATV's are so dangerous that they deserve the extreme sanction of a specific congressional ban in addition to a refund to past purchasers. I do not deny that three-wheel ATV's have been involved in tragic accidents but are three-wheel ATV's so dangerous in comparison to snowmobiles, trail bikes and four-wheel ATV's that they deserve to be banned? Since it is unavoidable that there is some risk of injury with motion-related products, I continue to question whether ATV injuries are being caused by an inherent design defect or rider misuse. The appropriate solution for an irreparable design defect is a recall and appropriate consumer compensation. However, it is clear that in its approach to resolving the issue through the Consent Decree evidence was not there to support is that ATV's are complex vehicles requiring certain specialized expertise for safe operation. Facts show that rider misuse is a significant contributor to ATV-related injuries:

—30 percent of all fatal accidents and 14 percent of all reported accidents on ATV's involved alcohol;

—31 percent of all ATV's involved in accidents were carrying passengers;

—almost 30 percent of all accidents involved excessive speed;

—almost 10 percent of those injured were operating an ATV on paved roads;

—70 percent of those injured in ATV-related accidents were not wearing helmets; and

—96 percent of all ATV-related injuries to children involved such children either riding as passengers or operating larger ATV's intended for older youths or adults.

It is interesting to note that this last point has been largely ignored by Congress as well as the press. The CPSC's hazard analysis identified a total of only 3 accidents involving the 55,000 child-size ATV's in the United States. These figures clearly suggest that ATV users, especially parents, must take greater responsibility for ensuring their own safety, as well as the safety of their children. The Consent Decree adequately addresses these safety concerns.

I believe it is important to explore the ramifications of a legislatively-required refund. There are those who allege that the ATV manufacturers misrepresented their product. That is a claim that has traditionally been decided by the courts. Currently, there is a class action lawsuit pending in the U.S. District Court for the Eastern District in Pennsylvania. Should we in Congress circumvent the judicial and administrative processes by implementing relief that could not be attained through the courts? I do not believe so. It is no secret that the overwhelming majority of ATV's are manufactured in Japan, a nation that is presently running a huge surplus in its trade with us. Is it a coincidence that the sanction of a refund is being sought against this industry? I submit that as long as Congress seeks to enact product specific legislation, these types of extraneous political considerations cannot be excluded. For the record, it should be known that legislation will not merely harm Japanese interests, since 4,900 American ATV dealers and 38,000 American workers will be affected.

I do not believe we in Congress have the expertise to legislatively enact product safety standards, including design characteristics and performance standards, without any requirement that a careful legally sufficient record be developed by the Consumer Product Safety Commission (CPSC). If Congress does this, is it not bypassing the very due process protections that we insist that the Commission follow when it promulgates such standards? The Commission has the expertise. It was formed to offer the expertise and it should be left to do its job without Congress intervening.

Furthermore, the Department of Justice has indicated that ATV refund legislation "may be problematic under the takings clause or the constitutional prohibition of ex post facto laws." It is my understanding that we will hear from many distinguished legal scholars today regarding the constitutionality of this legislation. I look forward to that testimony and hope that Members will give credence to their remarks.

I wish to reiterate that we in Congress should not prejudge the class action litigation currently pending in the Federal court nor would we prejudge the efficacy of the Final Consent Decree. From 1985 to 1987 there has already been a 32 percent decline in the ATV injury rate. According to the CPSC's estimates, the Consent Decree will reduce the injury rate by 56 percent between 1985 and 1992. It is my hope that today's witnesses will keep their focus on these issues. The ATV debate has often been characterized by a surplus of emotion—emotion that I as a father and grandfather can certainly appreciate—with perhaps a scarcity of facts. Since we now have a specific proposal, it is my hope that we will focus on how best to resolve this issue.

I have been told that Mr. Craig of Idaho, who has appeared before this subcommittee in the past to offer his views on the ATV issue, is unable to attend this hearing. I ask unanimous consent that the record be held open for the insertion of Mr. Craig's views on this bill.

I look forward to today's testimony.

Mr. FLORIO. Thank you very much. We are now pleased to have as our first panel of witnesses, two individuals; Mrs. Bonnie Sumner of Milwaukee, Wisconsin; Mrs. Virginia Duncan of Bayside, Wisconsin.

As with all of our witnesses, formal statements that the witnesses have will be put into the record in their entirety, and the witnesses may proceed as they see fit. We would like to proceed in a summary fashion.

Mrs. Sumner, we would be happy to hear from you.

STATEMENTS OF BONNIE SUMNER, MILWAUKEE, WI, AND VIRGINIA BURDICK DUNCAN, BAYSIDE, WI

Ms. SUMNER. Thank you, Mr. Chairman and members of the subcommittee, for giving me an opportunity to testify in support of H.R. 3991. I know that you have been in the forefront of Congressional concern about all terrain vehicles for a long time, and I would like to commend you publicly for your tenacious efforts on behalf of families of ATV victims.

I, unfortunately, have reason to know about the human tragedy that these vehicles can cause. I have been concerned about ATV safety since July 15, 1984, a day that changed my life forever. I had never seen an ATV before that day, and now they are the stuff of my nightmares.

My family was visiting acquaintances on their lake front home on that beautiful but windy day. It was so windy, in fact, we told our son Noah, then 14, he could not go sailing because it might be too dangerous. How ironic that now seems considering what later occurred.

The family we were visiting had, 1 month before, purchased a Honda ATV for their 14-year-old son. The boy's asked permission to ride the ATV up and back the mile long smooth paved driveway. I emphasized the words smooth and paved, because anyone who knows anything at all about ATV's knows they are never to be ridden on a smooth surface.

Three and on-half years ago I knew nothing about these vehicles. There was no warning sticker or any indication to alert us to their true menace. As I have already stated, I had never seen an ATV before that day. My first perception of the vehicle was that it was a cross between a big wheel and a golf cart. It looked stable, slow and safe. I have always been accused by my children of being an overly cautious parent. In this case, however, I saw no reason to worry about the ATV.

My husband and I and the two other adults present went off and the boys began their ride. When Noah did not return, they went to look for him. He was found in the woods at the side of the driveway, unconscious with the vehicle on top of him and a branch sticking out of his mouth.

The men were called, the vehicle was pulled off him and the branch removed while an ambulance was called. I brought with me some pictures of what he looked like before the accident and what he looked like after the accident. It will give you some idea of my feelings on this subject.

That accident was the cause of many interminable moments in my life, the first being waiting for the ambulance. After what seemed like an eternity, as I watched my son's broken and bleeding body, the ambulance arrived. He was unconscious and taken to a local hospital where he was stabilized and then sent on a 45 minute trip to Childrens Hospital in Milwaukee.

He remained in the radiology department until that night, and neither the neurosurgeon nor the radiologist who had performed the cat scan were encouraging. That night we were told that our bright, handsome son might never regain consciousness and of course, might die, might be a quadriplegic, live as a vegetable, experience seizures, experience future learning disabilities, et cetera.

That was the first of 30 nights we spent at the hospital. His coma was intentionally maintained by drugs to prevent his brain from swelling. A monitor was installed. We sat watching the monitor, hoping that the swelling would not increase indicating that he would have severe brain damage.

One of the periodic cat scans showed a clot between his skull and the brain, and for the second time in 2 weeks, this child who had never even had his tonsils removed, was undergoing open skull surgery.

My husband and I sat at his side 24 hours a day fearing that he might die and we would not be there. When he was taken off the coma inducing drug, he regained consciousness slowly and was moved to intermediate care. As he progressed, our job was to see that he walked up and down the halls to aid his respiration and regain muscle tone. At this point, the lesser injuries surfaced.

His mouth was still swollen and tender where the teeth had been knocked out and the jawbone pulverized, his broken collarbone and ribs made movement painful. He had no bladder or bowel control. The continuous intravenous insertions and blood tests made his arms and hands painful.

Two weeks after the accident, his injured spleen reruptured and he was back in intensive care, except this time he could not be sedated and was totally irrational and couldn't be physically restrained. He was given Haldol and Thorazine, usually prescribed for schizophrenics, in an attempt to calm him down. Their side effects were to cause extreme muscle spasm and constant loud animal-like moans.

I used all the tricks I had learned when my children were toddlers, and with a combination of threats and bribes we were able to keep him quiet and save his spleen. He was moved to a private room and 2 weeks later he was judged ready to go home.

On August 15, 1984, exactly 1 month after the accident with missing teeth, bone fragments in his gums, scars on his face and head, broken bones that were not healed, a precarious spleen and a supply of Valium and Thorazine to keep him tractable, he was sent home.

While he was in the hospital, we had contact with over one dozen different doctors and left with bills amounting to over $60,000.00. I slept in his room with him for a week because I was afraid that he would just get up and walk away. He started his freshman year of high school with facial scars, missing teeth, a shaved head and very disoriented.

During the next 2 years, he suffered various problems including painful oral surgery, hair loss and emotional difficulties. While we are grateful that he has made a recovery that will allow him to lead a normal life, we don't know the extent of the profound psychological and emotional damage that has been inflicted on him, and for that matter, on us as well.

This accident has changed our lives forever. I have become much more fearful of every day situations. If you multiply our experience by the number of victims of ATV related accidents, it will give you some idea of the incredible damage these vehicles have done and are continuing to do.

I recounted these experiences last July 28 before the House Government Operations Subcommittee on Commerce, Consumer Monetary Affairs. Why am I here in Washington again for the second time in less than 2 months? At that time, I explained that I harbor the somewhat naive yet wonderfully optimistic notion that what I do can make a difference; that maybe the little guy doesn't have to just sit there and take it.

I would like to believe that all the phone calls, letters and conversations that I have initiated on this subject in the past 3½ years as well as my testimony before the CPSC in 1985, have in some small way helped to bring this issue to the public's attention.

I will not be able to stop my efforts until ATV's are not only regulated but also recalled, so that in the future similarly unaware families will not suffer as we have. The horror for me is that the carnage continues and will in the future, unless the Consumer Product Safety Commission and especially Chairman Scanlon, stop worrying about Japanese companies and start worrying about American children.

Before I came to Washington last January, I called a family in Minnesota whose child was injured on an ATV Christmas morning of 1984. When I told them that I was going here to testify, their voice, breaking with tears, blessed me for my efforts and pleaded with me to urge Congress to stop the devastation. Their child has been in a coma for 4 years. He won't be helped by any decision that you make.

Other children and their families will be spared. Don't forget that while you see before you just one mother, I am one of the thousands of families of victims who are not formally organized. We don't have big industry money or high priced lobbyists behind us. We are the citizens and the consumers of this country, and we demand that you protect us properly.

What has happened since I testified before Congress almost 2 months ago? Why did I feel compelled to leave my family and take the time, effort, mental anguish and expense to come before my country's lawmakers once again? I came, because after all these years and all the endless talk, I finally saw a chance of something concrete and useful being accomplished.

The Consent Decree has been attacked by so many experts on so many fronts, that I can add little to their concerns. I would just agree that we are dealing with an industry that from the start, has shown a callous disregard of the inherent dangers of their product and has made no real progress towards making these vehicles mechanically safer.

In addition, the industry has publicly stated its intention to get three-wheel ATV's back in the stores as soon as they can modify them in some way.

Our elected representatives need to realize that this industry will not respond to weak, loophole ridden, unenforced actions. The American public, and especially our children, need laws that will send strong messages about these vehicles.

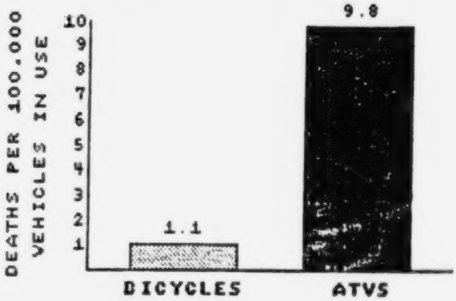
Who knows, maybe a law such as this could have saved the life of 9-year-old Ryan Hanson of Waupacca, Wisconsin who was killed last Saturday when his ATV rolled over on him. Nine years old. You tell me what a 9-year-old child is doing riding a vehicle like this.

I urge the members of this subcommittee to become as informed as possible about the dangers of ATV's and to support the passage of H.R. 3991. Thank you

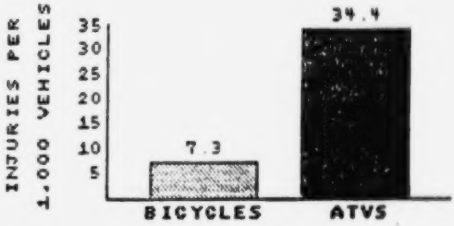
[The attachment to Ms. Sumner's prepared statement follows:]

ATVS VERSUS BICYCLES: WHICH IS MORE HAZARDOUS?

FATAL INJURIES PER 100,000 VEHICLES, 1985



HOSPITAL TREATED INJURIES PER 1,000 VEHICLES, 1985



The information above was derived from the following data, all figures relate to 1985:

	VEHICLES IN USE	DEATHS	INJURIES	DEATH:INJURY RATIO
ATV	2,500,000	244	85,900	1:352
BICYCLE	80,000,000	859	581,784	1:677

- There are 32 times as many bicycles in use as ATVs.
- The risk of fatal injury is 9.1 times higher for an ATV rider than a bicycle rider.
- The risk of sustaining an injury requiring hospital treatment is 4.7 times higher for an ATV rider than a bicycle rider.

These figures were obtained from the Consumer Product Safety Commission, the Specialty Vehicle Institute of America, Bicycle Market Research Institute, and the National Center for Health Statistics.

Mr. FLORIO. Thank you very much. Mrs. Duncan.

STATEMENT OF VIRGINIA BURDICK DUNCAN

Ms. DUNCAN. Thank you very much, Mr. Chairman and members of the committee. I appreciate this opportunity. I have waited 4½ years to be able to publicly tell the story of my father's death, because it is a different story, and it's a story that I feel so fully illustrates the inherent danger of the design of these machines. I appreciate not only putting it into the written record but the chance to verbally show the correlation.

My father died as a result of an ATV accident. He died because he didn't know that that bright red three-wheeled Honda he was so in love with could kill him very easily. My father died because an ATV dealer who knew him very well, said the machine could be perfect for his use, transporting vegetables and supplies back and forth from his big garden and transporting him through the Christmas tree plantation.

My father died because 4½ years ago there were no warnings, no ATV newspaper stories, no ATV radio talk shows, no general information regarding the ATV design dangers, no published studies, engineers reports, Congressional hearings and editorials written regarding ATV safety concerns.

My father died in 1983 because people then didn't know that three-wheeled ATV's were killer machines. I am here today because today, people do know that information and knowledge is available, and yet, the killing and the maiming is still going on.

The design characteristics have been studied, the reports have been made, the hearings have been held, and held, and held and held. And yet, in the face of graveyard statistics and the irrefutable evidence, the three-wheel ATV's are still out there. They are still being sold and purchased and ridden. There is still not appropriate legislation governing their use.

Thank you, Representative Barton, for you bill.

This is something that has just happened to me in the last few weeks through another experience. I am taking the time to tell you about it today because it is something that frightens me. The machines are still being loyally defended, not only by the manufacturers and dealers, but by their owners, the owner's associations and their lobbyists.

The refusal of manufacturers to take responsibility absolutely infuriates me. Quite frankly, the inability of the Consumer Product Safety Commission to protect consumers appalls me, but the action in the defense of ATV owners and their associations frightens me, because the unsuspecting public believes them and I am afraid so do many State and Federal legislators, the people on whom we all depend.

I am here to testify that the avid ATV owners who write the letters to the editors and call the talk shows are wrong. When Jackie Graff of Waukesha, Wisconsin writes into the Milwaukee Sentinel to say: "I believe that the ATV alone is not a killer but the people who use it are the issues, ATV's in fact, are only as deadly as the user," she is wrong.

I am here to testify that when Bill Farlow of Racine, Wisconsin writes the Milwaukee Journal that: "The real culprit is not the ATV or the manufacturer, it is the parent who wouldn't say no." He is wrong. I am here to testify that when Jeff Doyle of Burlington, Wisconsin writes the same newspaper that: "He is tired of hearing unsupported facts and statements regarding an ATV safety crisis," he is wrong.

I am here to testify that when Chuck Bille of Waupun tells the public reading the letters to the editor that: "If the Government stops ATV's they could just as easily stop hunting, motorcycling, snow skiing, snowmobiling and boating and so forth," he is wrong.

Worse than just being wrong, propagating this dangerous misinformation on the unsuspecting public, I believe, is downright criminal. I am here today that my voice may be raised not only in opposition to that dangerous message, but in protest to it. And in protest to the years of the foot dragging of people who could make a difference. I am also here to tell why my prayers are that none of those letter writers or owner critics will ever, ever, have to go to an ATV funeral like I did.

Former CPSC Commissioner Stuart Statler was right when he testified in January that the evidence assembled by the CPSC and the Department of Justice confirms that the very design of the three-wheeled ATV's render them inherently unstable and unreasonably dangerous. I am here today to testify that he was also correct when he stated that: "Even repeated experience on an ATV and familiarity with its uncommon handling, does not preclude the possibility of sudden and unexpected overturning as a result of that vehicle's inherent instability."

My dad's ATV overturned on him in the neighbor's front yard. He was experienced and familiar with the machine. I am here today to testify that the Department of Justice complaint is very correct in its statement: "That there is virtually no margin for error in the operation of ATV's because of their peculiar operating characteristics. The penalty for making the smallest miscalculation may be death or serious injury."

If it was my father's small miscalculation, he paid that penalty—he died. I am here today to testify that the Department of Justice is also correct in stating that: "The risk of harm presented by ATV's is both imminent and unreasonable. Each time an ATV is operated, a rider faces an unacceptably , unreasonable high risk that at any moment and with no sign of impending danger, he or she will either be killed or suffer severe personal injury."

With no sign of impending danger, my father suffered a very severe personal injury and it killed him. I am here today to testify that the National Association of Attorneys General ATV Task Force is right when it concludes that: "Even experienced riders can lose control of the three-wheeler in turns or uphill climbs or when encountering changes in terrain. Keep this in mind when we think about the Consent Decree. No amount of training and experience can protect the rider from the inherent dangers involved in operating a three-wheeled ATV."

My father's training and experience did not protect him from his ATV; he lost control on an easy turn and he died.

I am also here to testify that what CPSC Commissioner Carol Dawson herself says she learned traveling throughout the country to attend public hearings on the issue. That was that sometimes even when every precaution was taken, and an experienced adult was the rider, tragic, fatal accidents occurred which makes me surprised at her current vote.

Dad's helmet and years worth of experience didn't save him. The unforgiving ATV killed him anyway, another tragic, fatal accident. By the way, he was on his way to his Bible study at the time.

Let me tell you about him real quickly. At the time of the accident he was 76-years-old. He had been born and raised in Southwestern New York State Valley where he died. He retired there after a career as a High School Science teacher. Throughout his adult years though, he had maintained on that land, a Christmas tree plantation, several stands of timber and a hunting camp.

At 76, he was very much still in good health, a rugged farmer, hunter and conservationist. He had a respect for the land and machinery, and was familiar with both. For his entire life, he approached everything that he did with intelligence and caution. It was not at all surprising that the year before when he bought his three-wheeled Honda ATV, he had himself and the machine checked out totally. He took whatever training was available to him and then he practiced, practiced and practiced before he would even take the machine into the terrain of the Christmas tree plantation. By the way, he never went anywhere without his helmet on.

Dad bought his ATV as a utility vehicle, with the recommendation, the knowledge and the support of his ATV dealer who knew him and knew the purposes. Of course, for the really tough work he drove his Allis Chalmers D-15 tractor. I have seen my father at the age of 76 drive that tractor straight up the steepest hills. We are in the foothills of the Alleghenies, usually pulling a wagon for Christmas trees behind him. But he couldn't drive his ATV safely from his front yard to the neighbor's.

At the time of the accident, he was on his way to Bible study. Mom had a broken leg and couldn't go with him. He had his helmet on. He traveled along a dirt road and turned into a lawn that was just slightly irregular terrain. Somehow in making that turn he lost control and the ATV turned over on him. What kind of speed do you think he was traveling at that point? One or two miles an hour? No miles an hour. Interesting to think about it.

The ATV crushed my father's leg and hip horribly. As the ambulance raced him to the hospital he kept saying to the Valley's young Dr. Rick, I don't know what happened. I just don't know what happened. Maybe I did something wrong.

Dad survived the surgery but he died 3 days later from cardiac arrest, due to a massive pulmonary embolus. I am told by the doctors, that the risk of that happening to a 76-year-old person going into major surgery is very high. He went into that major surgery because an ATV sent him there.

There is even a special line on his death certificate that says: "All Terrain Vehicle Overturned." But he is one of the many, many deaths that is not even in the current number of 977. How many more of those are there.

Had my father lived, he would have been confined to a wheelchair for the rest of his life. For that man, the man of the land, for the man who still walked tall and strong through his Christmas tree plantation, for the man that led the pack out of the bellyachers hunt club every fall, that would have been a living death. I am very glad he was spared that and my mother and I, though we ached with the loss, were spared the devastation that so many of the families face when the ATV victim survives only to remain in a coma, in a wheelchair or in months and years of pain and therapy.

However, my mother lives daily not only with the loss of her husband of 55 years, but with the self-imposed feelings of guilt because it was she who said as he went out the door, why don't you drive your ATV. She thought it was safe too. We don't know what happened on that fall day in Skunk Holler. Perhaps my father did make a mistake.

Research shows ATV experience and training doesn't preclude that possibility. As the experts have testified, there is virtually no margin for error in the operation of ATV's. What kind of a machine is it that for the slightest fraction of an error takes a man's life.

I am here today to offer my father's story as testimony to the simple fact that despite what you read in the letters to the editors, despite what we hear from the Wisconsin All Terrain Vehicle Association, an Association that has already strongly lobbied against Chairman Florio's efforts, despite what the industry claims, the machines can kill. They still kill too many children, just killed one in Wisconsin.

But they can also train experienced safety conscious, properly attired, sober adults who are operating their machines properly. An ATV can even kill a man on his way to the Bible study next door.

Over the past 5 years, Dr. Rick has stood vigil over too many ATV's deaths and injuries. He has now informed his patients in writing that if they insist in continuing to expose themselves and their children to their ATV's, when they need a doctor—and they will need a doctor—please don't call him.

Last week when I was in Phoenix, I spoke with Dr. William Schiller, Director of the Trauma Services at St. Josephs Hospital and Medical Center—he is one of the many physicians nationwide who have asked the CPSC to either rid the country of ATV's or at least regulate them. What he was seeing in the trauma center is what moved him out of the operating room onto the soap box. He calls it a complete waste of life.

Dr. Schiller testified in California at the CPSC hearings in 1985. By the way, he is wondering why today it is apparent that that testimony hasn't done anything and we are all still testifying again. I asked him what he is seeing as far as reduction of injuries. Since he testified he says that in the last 2½ years he has seen no reduction in either the number of injuries or change in the type of injuries. He has started to see four-wheeled injuries.

There is something else that concerns Dr. Schiller, and you know now that it does me too. He said, I have seen many patients who suffer a variety of injuries who can't wait to get on another ATV. Some of them get very defensive. They defend the machine by saying that they would not have been hurt if they had been careful. They can't admit that the ATV is dangerous.

By the way, another Phoenix doctor, Dr. Lawrence Doep, who is a transplant surgeon once mentioned ATV's in a discussion about obtaining donors. He said that as long as they keep making ATV's there will be donors, because as long as they make ATV's, healthy, young people are going to be killed.

Please, we must find a way to protect healthy young people. Personally, I happen to think it would be a good idea to protect healthy older people too, from becoming premature donors.

It appears that we must protect everyone from a too soft Consent Decree and I am speaking of the new one. From an irresponsible industry and from the misguided, feverant, defensive of the machines by their owners and their associations, owners who would not be affected by the legislation that we are trying to see passed to protect the unsuspecting and the innocent young victims.

On a radio talk show in Milwaukee Monday, this past Monday, the Wisconsin All Terrain Vehicle Association Executive Director said, the Wisconsin's Attorney General was wrong about the dangers of the machine. The Ohio State University engineering professors Tom Carpenter and Bob Wright were wrong about the dangers of the machine, and parent's like Bonnie Sumner should take the blame for letting their children ride the machines.

Listeners called in to say that parents can and they should, control their children. Society does not need to protect them. And yet, on the wire service at that moment, was the report of the 9-year-old Wisconsin boy who died this past Saturday riding a four-wheeler, un-helmeted, and discovered under his machine by his father.

Mr. Chairman, I appreciate the efforts of concerned members of the U.S. Congress such as yourself, Senator D'Amato who represents the State in which my father was killed, Representative Barton, the sponsor of this bill. I hope that Wisconsin Senator Kasten will renew his efforts on behalf of ATV safety.

As for the two Wisconsin State Legislators, who despite the pleas from Wisconsin Attorney General, Don Hanaway, a member of the NAHE Task Force, recently backed off from the ATV bills that they had introduced. It's all dead for this session in Wisconsin. I would like to see them re-examine both the facts and their consciences.

I would like to see legislation that would send messages. The National Attorneys General Task Force has reported that they have been unable to discover any other hazardous consumer products sold which has been responsible for more deaths and injuries. They also said that one of the responsibilities of Attorneys General is that they must act when their citizens are victimized. I hope they will.

The Task Force says a lot of important and good things. I will just mention four stresses that they think are very important. One, a permanent ban on three-wheeled and child sized ATV's; (2) the use prohibited for anyone under 16; (3) a consumer refund for all ATV's, and (4) the development of mandatory consumer product safety performance standards.

I concur. I ask for that, and so do both the engineers and physicians with whom I have spoken.

I believe you know what needs to be done. I am just here today to remind you why it needs to be done. Bonnie said that as she sits here you see one mother representing all the mothers. As I sit here, you see one devastated daughter representing all the other daughters, sons and widows.

In conclusion, my 83-year-old mother cannot be here today, and would liked to have been at my side. So I would like her voice to be heard. Afterall, she is the little lady that we left alone in the Valley with her loss, her loneliness, her grief, and yes, her guilt. She is the one who must steal herself as the red three-wheelers still race up and down the Valley, kids on them, past her door.

She is the one who opened the letter from Honda this winter that was addressed to my father. Then her pain turned to anger, and this is just some of what she wrote to the President of Honda. The entire letter is in my testimony for the record.

"Where were your warnings when my husband bought his ATV. Now you tell the truth about those machines. Quoting the letter I just received, you should be aware that an ATV is not a toy and may be dangerous to operate. An ATV handles differently from other vehicles, including motorcycles and cars. An ATV can rollover on the rider without warning, and even hitting a small rock, bump or hole at low speed, can upset the ATV.

If my husband had had that information, I doubt if he would have purchased his ATV. I would have opposed it vehemently, as I did years ago when he was tempted to buy a motorcycle."

She goes on to talk about how careful he was, what he bought the machine for, that we live in a rural area, what happened to him. It overturned, as a result multiple fractures on his left leg and hip, surgery and death.

My next door neighbor, she says, spent many months in a back brace following an accident with his ATV. He got rid of his machine. A little boy living about six miles from me was killed instantly while operating his ATV in his own front yard. He is another member of the 900 club.

Your information letter should have been included in all advertising material back in 1982. Why wasn't such information provided to each buyer prior to the time of purchase? Why, why, because there would have been fewer sales. My husband was not under 16. He was a trained, helmeted, safety conscious adult driver, proceeding slowly over an easy terrain.

You still do not acknowledge the dangers to all drivers of all ages that the ATV presents to its basic structural deficiencies. I also resent that.

After she mailed the letter to the President of Honda, she wrote to each of the three Consumer Product Safety Commissioner's and said:

"Dear Commissioner. Enclosed you will find a copy of the letter I have just sent to the President of Honda, America Honda Motor Company. I appreciate the role of the Consumer Products Safety Commission has played in this issue, particularly in requiring safety instructions to be issued by Honda to all ATV owners.

However, I join with those who deeply regret that our Government has not insisted upon the total recall of all of the dangerous vehicles. The problem goes beyond education and beyond youthful drivers. The problem is the machines, they still will kill."

I am here today to testify to that, and I thank you for the opportunity.

Mr. **Florio**. Thank you very much to both of our witnesses. I am going to yield to Mr. Barton at this point.

Mr. **Barton**. Just one question, is this your son Ms. Sumner, up here on the board?

Ms. **Sumner**. Yes.

Mr. **Barton**. He is now——

Ms. **Sumner**. He doesn't look like that anymore, no. I will tell you that I took those pictures in the hospital because it was the most horrible thing that had ever happened to me in my entire life. I didn't want to forget it.

I was telling somebody yesterday that I am very fortunate to be here. I found out about this hearing at the last hearing that I was at. But at the last hearing I was at, I found out about it on my own. I am able to come here. There are thousands of families of mothers, daughters, widows, people out there who can't be here.

Sometimes I feel so isolated because I don't have a lovely acronym for a nice association. There is no association because we don't have any money. When I got back last time I spoke to two mothers in Mississippi, one of whose 9-year-old son died and the other has a 12-year-old son that went through a very bad time. They both said the same thing to me, please make sure that they understand that it's not just you, that we wish that we could be there but we can't.

We are talking about people all over this country. I think something that some of the representatives don't understand. Larry Craig said to me last time, well we need State laws. I agree with Larry Craig. We do need State laws. However, that's not so easy. If the State legislators see that on the Federal level things aren't being done they feel that they can put it on the back burner too.

We have to start someplace. Laws send messages. If there are strict laws, people can disobey them. People disobey all the laws that there are. But there are law abiding people and they will not disobey them. I thank you again.

Mr. **Barton**. Let me ask a question of both of you. Some people suggest that this Consent Decree is the final word and that we don't need to do anything else. How would you ladies respond to that?

Ms. **Sumner**. The Consent Decree looks wonderful in the newspaper. When it came out in the newspaper in Milwaukee, people were calling me up to congratulate me. There are problems. The Consent Decree, because it does not offer a refund—and let's face it, we are talking about money. What are we talking about in the refund—we are not talking about storm troopers going to peoples doors and grabbing their ATV's from them. This is what some of the owners seem to think.

All we are talking about is the industry spending money. I find it very difficult in my heart to pity the industry, that it is going to cost them money to buy back these murderous vehicles that they sold to people under false pretenses.

I have seen tapes of the promotional materials that they sent to their dealers in marketing these vehicles. They wanted them marketed as safe, as stable, as good old family fun. They were deceitful and they deserve to pay the price for it.

We are talking about the recall. What a recall will do is——

Mr. **Barton**. My bill is a refund. It doesn't demand any——

Ms. **Sumner**. You are quite correct, I'm sorry. I mean a refund versus a recall. In other words, we are not harming the people who choose to keep them. We are allowing the people who bought them under false pretenses to get their money back. I don't see why anybody but a spokesman for the industry would argue against that. I don't blame them.

Mr. **Barton**. What about you, Ms. Duncan. Is the Consent Decree the final——

Ms. **Duncan**. No, it isn't. I think the preliminary Consent Decree moved us one step further. I commend the better things that are in this Consent Decree, but I still think it falls short. Again, legislation sends messages. I don't think it sends the message that we need to get out.

I don't think it offsets what all of these owners are saying publicly that people are believing. I am having a great deal of difficulty envisioning what kind of advertising and marketing it is that the industry has agreed to do that will point out the dangers of the machine.

They are not going to go on television and have a 60 second commercial that says this machine can kill you very easily. Also, the training, and that's what the association people keep saying. I am glad that more people know now and I'm glad that there's more training. As I have said, training and experience has proven not enough.

Mr. **Barton**. If your father had not been injured in 1983 and were alive today, and we had a refund mechanism in place, would he have taken advantage of that in your opinion?

Ms. **Duncan**. I think if my father were alive today, by now he would have learned the danger of the machine and that machine would no longer be on my father's property. It would be a moot question.

Mr. **Barton**. So he would have already——

Ms. **Duncan**. Yes.

Mr. **Barton**. I will yield back, Mr. Chairman. I know there are a lot of others who want to ask questions, and I don't want to monopolize the time.

Mr. **Florio**. The gentleman from Utah.

Mr. **Nielson**. I appreciate your testimony. It was very moving. Let me ask a couple of questions, however. Do you think the refund in Mr. Barton's bill would enhance safety?

Ms. **Sumner**. The reason it will enhance safety again, is it will send a message. We all hear about the famous refunds that are printed in the paper and people return things. People need messages. People need a little help sometimes with their thinking.

If somebody is wavering, somebody on the borderline, I would like to think that maybe the parents of this 9-year-old boy, if they had been able to return that vehicle and get their money back—these vehicles cost a lot of money. Some people might keep them because well, maybe they are not as bad as they say and I put out a lot of money for this thing.

Mr. Nielson. Mrs. Duncan, as you described your father, an outdoorsman and one who enjoyed his work and leader and so forth, I find that difficult for me to believe your statement he would have returned it. If he had not had a problem with it and enjoyed it as much as you say he did, don't you think he would have kept it?

Ms. Duncan. No, I don't think my father would have, because of his history of cautiousness and safety awareness. I think once he had that information——

Mr. Nielson. How long did he have the machine?

Ms. Duncan. One year. My particular father was exceptional in that consciousness so I don't believe he would have. Furthermore, the little lady, once she got wind of the fact that it was, it would be just like the motorcycle. Tom, you are getting rid of that thing.

As far as the refund, I think that some people that might decide they didn't want it for their family instead of selling it to another, might be willing to get their money back from the manufacturer.

Mr. Nielson. I agree that these warnings should have been on long before they were. How about the training that they are now offering, is that adequate?

Ms. Sumner. I have to answer that question, because I was on the talk show that Virginia was talking about on Monday with the Executive Director of the Wisconsin All Terrain Vehicle Association.

Is the training adequate, is not the question. The question is, do people take the training, OK?

Mr. Nielson. The bill requires them to give training. What makes you think that they will take it, even though the bill requires it.

Ms. Sumner. I will go back to what I said before. I consider this legislation a message. If something like this passes, I can go to my State and I can say to them that these vehicles have to be licensed. You have to be required to take training, to get a license to drive the vehicle just like an automobile.

We don't let children or anyone for that matter, drive an automobile without training. We require it. They have to get a license from the State, right? In Wisconsin, they need the message from you. Our legislators are dealing with rural people as Virginia said, who don't want to let go of any of their right to kill themselves.

Sometimes I think that maybe some of them should be given that right, but not for children. I will not give them the right to kill their children. This bill won't handle that, but it is a message. Do you understand? You are powerful. You are a power. You give messages. Use that power for good.

Mr. Nielson. Lecture received.

Ms. Sumner. I used to be a teacher, by the way.

Mr. Nielson. I was too, for a long time. Let me ask you a question. We have all sorts of ads on television. We see a car weaving in and out of men and so on, all sorts of advertising.

Should we ban every product that has false or misleading advertisements? Do these kind of advertisements lead us to take chances and line up our friends down the line?

Ms. Sumner. Remember Virginia's margin of error? That's what the difference is. You cannot compare an ATV to a car. Do I like those ads, no. I have teenage children. Do I like it when they watch those ads? I don't. I say to them, you don't think that's how you are going to drive, do you.

I don't like those ads. But there is a margin of error.

Mr. **Nielson**. Even the ones that don't have men in them, still they drive up and down the hills.

Ms. **Sumner**. I know what you are saying. My point is, what I have learned in all the research that I have done since this happened to my son from engineers and from other experts, there is no margin of error. You can't make a little mistake very often and not be injured. That's the difference.

I don't like those ads, but you know what, I can't change everything. There are a lot of things that I don't like. I do my best, but this is my issue.

Mr. **Nielson**. Some of the testimony that we have heard is that ATV manufacturers are misleading advertising. They attract people by these. I say that car dealers do the same thing and ski machines do the same thing.

Ms. **Sumner**. I am agreeing with you. Those machines tend to have more of a margin of error. If you make that mistake, there are times that you will walk away from it.

Mr. **Nielson**. Are you serious? The ATV has more of a margin of error than a car?

Ms. **Sumner**. Less.

Ms. **Duncan**. Less.

Ms. **Sumner**. Less margin of error.

Mr. **Nielson**. You are serious about that?

Ms. **Sumner**. Absolutely.

Ms. **Duncan**. Let me just add something. In my conversations with Professor Tom Carpenter, who co-authored the white paper on ATV lateral longitudinal stability that was presented last summer at the American Society of Agricultural Engineers, he focused also in talking to us about the tires. He talked about the fact that there was no warning.

The machine does not have a skid time that you can even have a knee jerk reaction. He said I was driving down the highway one time in water at 65,70 miles an hour and went into a skid. I had time enough to react to be able to do what I knew I could do to give myself a fighting chance in a car.

You don't get that on an ATV. One of the other reasons that I would like to see your power used and the national legislation speaking to our State legislators on this who were just trying to do what Bonnie said, just get required training and licensing, and also ban the sale and use for the under 16.

One of the reasons is that maybe this can speak to my other concern. It has to be a more powerful, a more legal voice to offset the many voices of the owners that are constantly—I saw the information that they sent to Mr. Florio. The ATV Association will present statistics where they will show you that ATV's are not as dangerous as bicycles and as snow mobiles. It is apples to oranges. As long as apples to oranges comparisons can be made and there is not a more powerful voice, they will be made. And when you don't know any different, you believe them.

Mr. **Nielson**. I have other questions that I would like to submit in writing.

Mr. **Florio**. The time of the gentleman has expired. The gentleman from California.

Mr. **Dannemeyer**. I have no questions, Mr. Chairman.

Mr. **Florio**. The gentleman from Ohio.

Mr. **Eckart**. I have no questions, Mr. Chairman.

Mr. **Florio**. Let me thank both of the witnesses. Their testimony has been important to highlight much of what we know already, but even some new points. The testimony of Mrs. Sumner just putting into question the accuracy of the title, all terrain vehicle. These may very well be more appropriately labeled, some terrain vehicles.

Ms. **Sumner**. Or no terrain vehicle.

Mr. **Florio**. There are situations where these vehicles are really not designed to be used, that people are not informed about. Likewise, the point that you have brought to our attention that Mr. Barton has previously brought to our attention, that as horrendous as the numbers of deaths and injuries are, we don't know if that is the true number.

As a matter of fact, I guess we do know that it is not the true number. There are unreported deaths, there are unreported injuries, so that when someone throws around the figure of 20 people a month dying, that may very well not be the accurate number associated with these vehicles.

I guess the conclusion which prompts my interest in the gentleman's bill is that we now are beyond dispute with regard to the nature of the problem. The industry and the Government have signed a decree that says that they are inherently dangerous vehicles, the three-wheeled vehicles.

By nature of the instability of the vehicle, the defect in the design, they should not be sold from this point. The next logical step, then, would be that if these vehicles are so bad that they shouldn't be sold, then past purchasers should have some kind of recourse which will enable them to get rid of these machines, if they want to, without being penalized economically. Not taking this step is like walking away from the reality that there are 1.5 million ATV's out there and that we can look forward to continuing to read about more people being injured and dying because of those vehicles that the Government and the industry have said are inherently dangerous.

I have a real serious problem just walking away and having, whether it be the Justice Department or the Congress of the United States, saying that's the fact of economic life and we are just going to have to accept it. The reasonableness of the proposal—again, we are not talking about recalls, we are talking about refunds—the reasonableness of that proposal it seems to me, is important and appropriate inasmuch as the Consumer Product Safety Commission advocated that.

Frankly, this has not been a particularly aggressive Agency to start with. For them to be advocating that, for the Justice Department to have it in its complaint when it filed it in court, and then to be walking away from it, does not reflect well on those in positions of authority in this area.

I would just like to express my appreciation to the two of you for your testimony today and say that this committee will work in a way that I hope will advance the cause of safety in this country. As we move through the deliberative process, your testimony will be of assistance to us. Thank you very much.

Ms. **Sumner**. Thank you, Mr. Chairman.

Ms. **Duncan**. Thank you, sir.

Mr. **Florio**. Our next panel will consist of the members of the Consumer Product Safety Commission. We are pleased to have the Honorable Terrence Scanlon, the Chairman; Commissioner Carol Dawson, the Vice Chairperson; and Commissioner Anne Graham.

We welcome the Commissioner's and their staff to our committee. As on previous appearances, statements will be made part of the record in their entirety. We would recognize the Chairman first, Mr. Chairman please feel free to proceed as you see fit. We would ask, for the record, that you introduce the various staff people who are here.

Mr. **Scanlon**. I would be happy to, Mr. Chairman. On my far left is Commissioner Anne Graham; on Anne's right is Vice Chairman Carol Dawson; on Vice Chairman Dawson's right is Nick Marchica, the Chairman of the CPSC's ATV Task Force; on my immediate left is Dr. Len DeFiore, the Executive Director of the Commission; on my immediate right is Jim Lacy, the Commission's General Counsel; and on Jim's right is Roy Deppa, the Chief Engineer for CPSC's ATV Task Force.

Mr. **Florio**. We welcome you all to our committee.

STATEMENTS OF TERRENCE SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; CAROL DAWSON, VICE CHAIRMAN; ANNE GRAHAM, COMMISSIONER, ACCOMPANIED BY: JIM LACY, GENERAL COUNSEL; LEN DEFIORE, EXECUTIVE DIRECTOR; NICK MARCHICA, CHAIRMAN, ATV TASK FORCE; AND ROY DEPPA, ENGINEER, ATV TASK FORCE

Mr. **Scanlon**. Thank you, Mr. Chairman. I appreciate this chance to summarize my personal views on the provisions of H.R. 3991 and the proposed final settlement with the ATV industry. I would request, however, that my complete statement be made a part of the hearing record.

As you know, the Commission voted on Monday to accept the terms of two Final Consent Decrees on ATV safety. Although these decrees were based on the two preliminary Consent Decrees signed on December 30, 1987, and are still subject to court approval, they are far more detailed than were the preliminary Consent Decrees and are, in my view, much improved.

In addition to certain marketing restrictions, the Final Consent Decrees spell out how an estimated $8.5 million public advertising campaign on ATV hazards will be conducted; what types of warnings and point of purchase information will be required; how rider training programs will be implemented; the incentives that will be provided to encourage people to take training; and, what industry will do to encourage dealer compliance with the agreement.

Also, the consumer safety verification form, which was a controversial part of the preliminary Consent Decree and which troubled me as soon as I saw it, has been deleted from the final settlement.

Overall, I believe that this settlement is a good one, deserving of a chance to work.

In particular, I am pleased that financial incentives, a choice of a $100 savings bond; $50 cash or a merchandise credit, will be provided to purchasers of Honda, Yamaha, Kawasaki and Suzuki ATV's and members of their immediate families who take a rider training course. Our studies have shown that inexperience is by far the greatest risk factor associated with riding an ATV, 13 times above average the first month of ridership, in fact. Also, industry's agreement not to market any three-wheeled ATV's or adult sized four-wheelers to children under 16 is encouraging, as is the distributors commitment to continue repurchasing new three-wheelers in dealers inventories.

These marketing measures will add impetus to the current trend towards four-wheelers which, in conjunction with other factors, is believed to be largely responsible for the 11 percent drop in ATV-related injuries that occurred in 1987.

In addition, there are other reasons to believe this settlement will further reduce ATV-related deaths and injuries. As a result of this agreement and other past as well as future CPSC activities, our staff projects that both the number and rate of injuries will decline substantially over the next 4 to 5 years.

By 1992, the annual number of injuries associated with ATV's is expected to be 22,000 lower than it was in 1987, despite increased vehicle usage. Also, the likelihood of injury while riding an ATV will have declined by about one-third from its 1987 level, and by approximately one-half from its 1985 to 1986 high.

I would ask Dr. DeFiore to show you the chart here. Mr. Chairman, I would ask that this chart be made part of the record also. It will show how the rate of injuries is being reduced. Len, do you want to explain that.

Mr. DeFiore. There were 86,000 estimated emergency room treated injuries, and that calculated to a rate of approximately 45 injuries for every 1,000 ATV's in use. At the present time, that is our latest data in 1987. There were approximately 77,000 emergency room treated injuries and there were 2.5 million ATV's in use, which calculated to approximately 31 injuries per 1,000 ATV's in use or roughly a one-third decline in the rate of injury since the time the Commission began this project.

As we look to the future, taking into account all of the various activities from all parties—industry, CPSC et cetera—we project that by 1992, there will be approximately 2.8 million ATV's in use, the number of injuries will have declined to approximately 55,000 per year and the injury rate at that point is projected to be roughly 20 per 1,000 ATV's in use.

The net of this is that injuries will have declined—you will see a decline of injury rate from the time we began the project from 45 injuries for every 1,000 ATV's in use down to 20 per 1,000 ATV's in use, or roughly a 50 percent decline in the rate of injury.

Mr. Florio. Does that break out ATV's, four-wheels and three-wheels?

Mr. DeFiore. This is for all ATV's in use. Obviously, one of the factors that led to this decline is the changeover from the use of three-wheeled ATV's to four-wheel ATV's. Our staff finds that the three-wheel ATV's are approximately 1½ to 2 times more likely to have an accident than a four-wheel ATV.

So part of this decline is accounted for in the fact that by 1992 very few three-wheelers will be in existence, whereas when we began this, almost the entire ATV population were three-wheelers.

Mr. **Florio**. So you didn't break out what the fact of the 1.5 million three-wheelers still being in existence contributes or doesn't contribute to this overall average.

Mr. **DeFiore**. Yes, it does. This decline—as the three-wheelers disappear from use, the rate of injury declines. That is included in that.

Mr. **Scanlon**. I might observe also that the terms of this agreement are consistent with the findings and the recommendations of the Commission's 14,000 page ATV Task Force Report. Moreover, the injury reduction estimates just given don't include any impact from future State legislation such as licensing requirements, mandatory training provisions, minimum ages for operators and helmet laws, the adoption of which will continue to be encouraged by the CPSC.

I recognize, of course, that Congress is not bound by this settlement and is fully within its rights to pass legislation that might be inconsistent with portions of it, as certain provisions of H.R. 3991 are. Moreover, if Congress does pass such a bill and it is signed into law, I will make every effort to implement it quickly and effectively. However, I am a bit concerned that if Congress were essentially to countermand this agreement before giving it a chance, such action might discourage other industries from negotiating with the Commission to implement quick and effective safety remedies for consumers.

Inasmuch as over 95 percent of our corrective action plans are worked out voluntarily and compulsory regulatory action often takes much longer, that could have an adverse affect on our product safety efforts in the future.

I do have some thoughts concerning some specific provisions of H.R. 3991, but rather than present them all, let me just remark briefly on two and refer you to my complete statement for the balance of my comments.

First, refunds for past purchases of three-wheeled ATV's. H.R. 3991 would require the Commission to set both the amount of money that would be refunded to past purchasers of ATV's and the procedure for obtaining these refunds. But unless the Commission sets the refund figure indisputably high, this repurchase program could be a nightmare for us to administer.

Not only does the Commission lack experience and expertise in setting used motor vehicle prices, but there would be hundreds of models of ATV's to assess, nearly 5,000 local dealers involved, many thousands of questions to answer, and innumerable disputes to resolve. For an Agency with a field staff of less than 150, that would be a tremendous burden.

Furthermore, if the Commission were to set the repurchase price high enough to attract a significant number of vehicle returns, the added cost to the industry of the refund program would likely be passed on to future purchasers of four-wheeled ATV's, since the distributors would not be able to resell the returned machines in this country except as scrap or for used parts.

Ironically, if the latter were to occur, the resulting increase in the supply of used three-wheeled ATV's parts could reduce the price of such parts and help extend the current useful life of unreturned three-wheelers, now estimated at 7 years, contrary to the intent of the refund program.

Second, with respect to performance standards, my feeling is that these are a good idea and should be pursued voluntarily if possible but mandatorily if necessary. In the Final Consent Decrees the industry and the Government agreed to bargain over these standards in good faith under the court's supervision. These negotiations should be allowed to play out. But if the industry does not bargain in good faith and performance standards are not forthcoming within the timeframe agreed to, then I would support mandatory standards. However, I would rather see what happens in the next few months before deciding whether they should be imposed under current CPSC procedures or pursuant to Federal legislation.

Let me close with several general observations. First, I can sympathize with the sense of frustration that has prompted the introduction of H.R. 3991. Clearly, the ATV industry did not respond to the death and injury toll anywhere near as quickly or as effectively as we or others would have liked.

Likewise, I can appreciate the desire of the authors of H.R. 3991 to expedite action on ATV's. Certainly, remedies are needed now, which was a major reason why I favored a negotiated settlement over protracted litigation.

But, those very points argue for giving this ATV settlement preference over Federal legislation at this point. Not only will it have a significant impact on ATV-related deaths and injuries, but it will take effect shortly and, if there are no distractions, be implemented rapidly which means a variety of safety measures will be in effect in the very near future, which I know is what we all want to see.

Mr. Chairman, that concludes my formal statement. I would be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Scanlon follows:]

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

CHAIRMAN TERRENCE SCANLON'S TESTIMONY
ALL TERRAIN VEHICLE (ATV) LEGISLATION
SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND COMPETITIVENESS
U.S. HOUSE OF REPRESENTATIVES
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

March 16, 1988

Mr. Chairman, Members of the Subcommittee:

In light of recent developments concerning all-terrain vehicles (ATVs), I appreciate having this opportunity to give my personal views on the provisions of H.R. 3991 and the proposed final settlement that has been reached with the ATV industry. That settlement, I might add, is still subject to court approval.

As I am sure you know, the Commission voted on Monday to accept the terms of two Final Consent Decrees (FCDs) that were hammered out over the last 10 weeks by lawyers representing the affected parties. Those terms are based on the two Preliminary Consent Decrees (PCDs) signed December 30, 1987. However, it should be noted that, in many respects, these Final Consent Decrees are far more detailed than the provisions of the PCDs and in several ways they are quite different and, in my view, considerably improved.

In sum, the Final Consent Decrees -- one covers the foreign distributors of ATVs and the other the largest American distributor -- run for 10 years and set forth no less than 10 different methods of addressing the risk of death and injury associated with ATVs. Generally speaking, these methods provide for: (1) a continuation of the previous agreement not to market 3 wheeled ATVs or adult size (above 90 ccd) 4-wheelers to children under 16; (2) continued repurchase by distributors of dealers' stocks of new 3 wheelers; (3) various types of warnings to consumers on the hazards associated with ATVs; (4) a national corrective advertising campaign costing approximately $8.5 million; (5) free rider training for some past and all future purchasers of ATVs and their immediate families; (6) a toll-free ATV safety information

HOTLINE; and (7) good faith efforts to reach agreement on ATV performance standards within four months. Also, I should mention that one of the distributors, Polaris, will continue its practice of not marketing its ATVs to children under 18.

More specifically, the Final Consent Decrees spell out how the multi-million dollar public advertising campaign on ATV hazards will be conducted, what types of warnings and point-of-purchase information will be required, how the rider training programs will be administered and implemented, what types of incentives will be provided to encourage people to take the training, and the efforts industry will make to encourage dealer compliance with the agreement. Of particular importance, in my view, are the provisions dealing with rider training and performance standards.

The rider training provisions commit the "Big-4" distributors to start setting up their training programs within 60 days of court approval of this settlement. In addition to previous training proposals, these provisions call for small class size, special training for 12-15 year olds, and some honest-to-goodness financial incentives that should help overcome the dismal track record of the past with respect to the training of new riders. Moreover, these arrangements can be enforced in court, a fact that cannot be stressed enough. Anyone who purchased a Honda, Yamaha, Kawasaki or Suzuki ATV on or after January 1, 1987, plus members of their immediate families, will get their choice of a $100 savings bond, a $50 cash rebate or a $50 or above merchandise credit if they sign up for and complete the training. Moreover, the "Big-4" distributors have agreed to develop an ATV loaner program so that dealers will have enough machines available for all those purchasers and immediate family members who wish to be trained. Also, the CPSC is free to, and will continue to, urge state legislatures to adopt mandatory rider training requirements.

For the record, I should point out that the FCD signed by the American distributor, Polaris, provides for one-on-one training to be given by certified instructors at Polaris dealerships. The training course will be somewhat different but the curriculum will still have to be approved by the CPSC. Also the incentive to take training is different, it being the denial of warranty protection in the event a purchaser refuses to take ATV operator training.

With respect to performance standards, my feeling is that these are a good idea and should be pursued, voluntarily if possible but mandatorily if necessary. The government and industry have agreed to bargain in good faith under the Court's supervision. These negotiations should be allowed to play out. However, if the industry does not bargain in good faith and performance standards are not forthcoming within the time frame agreed to, then I would support mandatory standards.

As for the consumer education effort, it is notable not only for its scope but for the fact that the CPSC will have approval rights over the owners' manual supplements, safety videos and some of the other educational materials. Also, I should point out that the consumer safety verification form, which had been included in the preliminary consent decrees as an informational item, is not a part of this final agreement. Personally, I am pleased that it was deleted, having been concerned by its potentially negative product liability implications to consumers from the very first time I heard of it.

While it is unfortunate that such an agreement could not have been agreed to by the industry much earlier, all things considered, I believe this settlement is a good one that should be given a chance to work. In particular, I am pleased that financial incentives will be provided to promote rider training since our studies have shown that inexperience is, by far, the greatest risk factor associated with riding an ATV -- thirteen times above average the first month of ridership, in fact. Also, industry's agreement not to market any 3-wheeled ATVs, or any adult-sized 4-wheeled ATVs to children under 16, and to continue repurchasing new 3 wheelers in dealers' inventories, is encouraging. Both actions will add impetus to the current market trend towards 4 wheelers which, in conjunction with other factors, is believed to be largely responsible for the 11% drop in ATV-related injuries that occurred in 1987.

The bottom line in any such assessment is -- how well can this agreement be expected to work and what can we expect in the way of injury reduction? To my way of thinking, the terms of the decrees are specific enough, focused enough, enforceable in federal courts and sufficiently subject to CPSC approval that the settlement can be successfully implemented in a relatively short period of time, which is critical, given the fact that deaths and injuries will continue to occur every month action is delayed. Also, I believe it can be appropriately monitored; industry efforts aside, the CPSC has spent over $50,000 to date monitoring the preliminary consent decrees and will do whatever is necessary, including requesting additional funds from Congress, to keep up the effort in the future.

In addition, there is good reason to believe this agreement will reduce deaths and injuries. In fact, the CPSC staff has projected that, as a result of the settlement and other past as well as future CPSC activities, both the number and rate of injuries will decline substantially over the next four to five years. By 1992, it is estimated that the annual number of injuries associated with ATVs will be 22,000 lower than it was in 1987, despite increased vehicle usage. Also, the likelihood of injury while riding an ATV will have declined by about a third from its 1987 level and by approximately a half from its 1985-86 high.

These figures, I might add, don't include any impact from appropriate state legislation, such as licensing requirements, mandatory training provisions, minimum ages for operators and helmet laws. Not only may such measures gain impetus from the very fact this agreement has been reached, but the CPSC will continue to encourage the adoption of state safety laws to complement this agreement.

There is one other aspect of this settlement that deserves mention at this point. Specifically, I'm referring to the provision wherein the industry has agreed not to oppose pending or future state legislation that is consistent with the negotiated settlement in the areas of rider training or age of operation. I'm pleased we were able to keep this provision in the decree.

In sum, the remedies provided for in the Final Consent Decrees are consistent with the findings and recommendations of the CPSC's 14,000 page ATV Task Force Report issued September 30, 1986. There is every reason to believe this binding agreement will produce good safety results and there is every indication it can be implemented more quickly than any other proposed remedy, including the provisions of H.R. 3991.

I recognize, of course, that Congress is not bound by this agreement and is fully within its rights to pass legislation that might be inconsistent with portions of it, as certain provisions of H.R. 3991 are.

Moreover, if Congress does pass such a bill, and it is signed into law, I will make every effort to implement it quickly and effectively. However, I am a bit concerned that, if Congress were essentially to countermand this agreement before giving it a chance, such action might discourage other industries from negotiating with the CPSC to implement quick and effective safety remedies for consumers. Inasmuch as over 95% of our corrective action plans are worked out voluntarily and compulsory regulatory action often takes much longer, that could have an adverse effect on our product safety efforts in the future.

That having been said, let me make a few comments about some of the specific provisions of H.R. 3991.

First, Section 2(c) of H.R. 3991 states that, within 180 days, the Commission shall promulgate a rule establishing the amount of, and procedure for, a refund to past purchasers of 3 wheeled ATVs. However, that Section does not indicate what kind of a rule or the particular statute under which it is to be promulgated. The most likely options, it would seem, are rulemaking under the Consumer Product Safety Act (CPSA) or rulemaking under the Administrative Procedures Act (APA).

If this Section is to be maintained in the bill, my suggestion would be to resolve the uncertainty about the rulemaking procedure to be employed. However, I might also mention that, unless the CPSC sets the refund in question at a figure so high that no one would argue over it, this repurchase program could be a nightmare for us to administer. Not only does the CPSC lack experience and expertise in setting used motor vehicle prices, but there would be hundreds of models of ATVs to assess, nearly 5,000 local dealers involved, many thousands of questions to answer and innumerable disputes to resolve. For an agency with a field staff of less than 150, all that would be a tremendous burden.

Also, I cannot help but be reminded that, if the Commission were to set the repurchase price high enough above the used market price to avoid headaches and attract a significant number of returns, the added cost to the industry of the refund program would likely be passed on to subsequent purchasers of 4 wheeled ATVs, since the distributors would not be able to resell the returned machines in this country except as scrap or for used parts. Ironically, if the latter were to occur, the added supply of used 3-wheeled ATV parts that would result could reduce the prices of those parts and help extend the current useful life of unreturned 3 wheelers, now estimated at 7 years, contrary to the intent of the refund program.

My second comment involves Section 3 of the bill which calls on the Commission to adopt two consumer product safety rules for 4 wheeled ATVs "under the Consumer Product Safety Act." However, as mentioned previously, the CPSA contains various evidentiary requirements and procedures that might make it difficult to achieve the objectives of that Section, especially within the time limits provided. For instance, Section 7 of the CPSA states that the Commission shall express such a rule in terms of performance standards, yet H.R. 3991 talks in terms of both performance standards and design characteristics.

Comment three relates to Section 3(a)(I)(A)(i) which deals with rider training and helmets. From the language, I gather that helmets are to made available for purchase along with the ATV rather than provided free of additional charge by the industry, as with rider training. Personally, I am all for increased helmet usage, as Commission studies indicate wearing a helmet while riding an ATV significantly reduces the risk of death or serious head injury. But, if the intent is that helmets should be made available at no additional cost, that needs to be specified. Also, I might note that training and helmets are atypical remedies under our regulatory powers, which speak to performance standards and product bans. To accomplish what you seek under rulemaking, I feel greater clarification in the statutory language is needed to defend these remedies in court.

My last specific comment relates to Section 3(b)(2)(A) of H.R. 3991, which would ban ATVs "specifically designed for use by individuals under the age of 16" if a rule providing for ATV performance standards is not adopted within one year. I can appreciate the intent behind this provision; however, permit me to observe that the effect might be to prompt children between the ages of 12 and 16 to ride adult size ATVs which, our studies indicate, puts them at twice the risk of the average rider. Therefore, the subcommittee might wish to consider eliminating or amending this provision so that it does not become counterproductive.

There are several other specific points that I could make, but rather than take any more time, let me close with two general observations. First, I can sympathize with the sense of frustration that has prompted the introduction of H.R. 3991. As I have previously indicated, the ATV industry did not respond voluntarily to the death and injury toll anywhere near as quickly or effectively as I or others would have liked. Rider training, or the conspicuous lack thereof to date, is an excellent example, as I have repeatedly pointed out. But now, however, the industry has entered into a meaningful agreement, which is enforceable in the federal courts, that should make a significant dent in the ATV accident rate if past experience with motorcycle rider training is any indication.

From much the same perspective, I can appreciate the desire of the authors of H.R. 3991 to expedite action on ATVs. Certainly, remedies are needed now, which was a major reason why I favored a negotiated settlement over protracted litigation. But that very reasoning argues for giving the ATV settlement preference over federal legislation at this point. It will take effect shortly and, if there are no distractions, be implemented rapidly which means a variety of safety measures will be in effect in the very near future which I know is what we all want to see.

Mr. Chairman, that concludes my formal statement. I'd be happy to answer any questions that you, or other members of the subcommittee, may have.

Mr. **Florio**. Thank you very much. We would be pleased to hear now from Vice Chairperson Dawson.

STATEMENT OF CAROL DAWSON

Ms. **Dawson**. Thank you, Mr. Chairman. It is a welcome opportunity to be here today to report on the Consent Decree just entered into by the Federal Government and the all terrain vehicle industry. I am also pleased that you have asked for my comments on H.R. 3991, The All Terrain Vehicle User Safety and Equity Act.

Mr. Chairman, the Final Consent Decree which has just been filed with the court should reverse what has been until now a losing battle against ATV deaths and injuries. I believe that we have achieved a balanced, effective settlement. I hope that when the rhetoric cools, the significance and the strength of this accomplishment will be recognized. The American consumer is the primary beneficiary of this agreement.

At this point I would like to respond that I did listen to both of the earlier witnesses, and I am always moved by comments such as theirs. I would like to comment to Ms. Duncan's comment and say that had I not supported this Consent Decree, I would have had no assurance that the additional protection of the refund provision would have been forthcoming. I felt that it was my responsibility as a public official to support this agreement so that we would have some assurance that there would be reasonable procedures enacted to provide protection to the American consumer.

I, for one, wish the Commission could have achieved every element set out in our complaint; however, I am a realist, and I respect our system of justice which affords every party in litigation an opportunity to present its side.

The ATV industry, like every other defendant in litigation, could have availed itself of its right to challenge the Government's claims on ATV safety. It gave up that right and agreed for a period of 10 years to undertake several significant and costly steps which will address the Government's concerns about safety.

To the critics who say the agreement did not go far enough and to those who say it went too far, I can only respond that, given the nature of our case, the law under which we operate, and industry's concessions, we got the best deal possible for the American consumer and in particular, the Nation's children.

Mr. Chairman, you also invited me to testify on H.R. 3991, the All Terrain Vehicle User Safety and Equity Act. In commenting on H.R. 3991, it is important to separate several issues. You have asked me whether the Consent Decree adequately protects consumers from serious hazards presented by ATV's. I believe it does.

Is there a need then for the proposed legislation? Ultimately, that determination rests with Congress and the President and is outside my role as Commissioner. However, I do not mean to suggest that I have no opinion on the administrative efficacy and safety impact of the proposed legislation.

As you know, I voted with the majority of the Commission to bring the section 12 action against the ATV industry. My vote instructed the staff, among other things, to seek a voluntary refund for purchasers of three-wheel ATV's and/or adult sized four-wheel ATV's brought for use by a child.

I have never retreated from my position that the voluntary refund provision would not only enhance safety but it would represent an appropriate redress for those who bought an ATV mistakenly believing ATV marketing.

Such marketing portrayed these vehicles as safe and fun for the entire family. The provisions in this proposed legislation providing for a voluntary refund are consistent with the position that I have taken and with testimony I have provided this and other congressional subcommittees in the past.

The ATV industry will dispute the safety impact of the refund provision. However, there is a long tradition in American commercial practice which provides that if a customer is unhappy with a product the merchant gives that person his or her money back. Furthermore, we have laws that recognize an implied warranty in goods.

Surely, a refund offer is not an unreasonable response to purchasers of ATV's who were never warned nor even imagined that there was a high risk that the foreseeable and normal use of the product would include death or serious bodily injury. Those who bought ATV's because they believed ATV marketing that these machines were safe and fun for the entire family ought to have the right to a reasonable refund if they so choose.

I believe they already have that right and there is presently a class action lawsuit in Pennsylvania which will perhaps determine if the courts will recognize such a right. The provisions of H.R. 3991 crafting a refund program would encourage those owners of three-wheel ATV's and those who purchased four-wheel adult-sized ATV's for a child who want to return them for safety reasons to do so. Other provisions will ensure that once returned they are not placed back into the hands of high risk users, namely children and beginners.

I will be happy to respond to questions concerning the other provisions of H.R. 3991 and the Final Consent Decree. But allow me to emphasize that I support the agreement we have achieved. It is a significant accomplishment into the battle against ATV deaths and injuries.

Mr. Florio. Thank you very much. Commissioner Graham.

STATEMENT OF ANNE GRAHAM

Ms. Graham. Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to appear here today to discuss my views on All Terrain Vehicles and on the legislation that has been introduced by Congressman Barton.

I appear here today as the only Commissioner to vote against the Final Consent Decree. I fully realize that all negotiations represent a process of give and take, and that all settlements require compromise. In deciding what compromises to make, however, the ultimate objectives sought must govern. In this case, the objective is clear to protect the public, including the thousands of children who ride ATV's, by implementing remedies that will significantly reduce the toll of injuries and deaths.

In my view, this objective has been fatally compromised by the Commission's failure to negotiate a provision in the final decree, allowing consumers to return three-wheeled ATV's and adult-sized ATV's purchased for use by children under 16 for a reasonable refund.

Critics of an ATV refund have questioned whether a refund will be effective in reducing injuries and deaths. Quite frankly, I find the criticism incredible. Simple logic tells us that if an unsafe product is removed from the hands of a consumer through a refund, the likelihood of sustaining injury and death has been totally eliminated.

To a limited extent, the decree generally appears to be a positive first step. Unfortunately, it simply does not go far enough. In my view, the next step must be taken by Congress. Legislation requiring a refund remedy for three-wheeled ATV's and for adult-sized ATV's purchased for use by children under 16 years of age should be immediately enacted by Congress.

Only then, can we be confident that we have taken all the necessary measures to protect the American consumer. Thank you, Mr. Chairman.

[The prepared statement of Ms. Graham follows:]

STATEMENT OF ANNE GRAHAM

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to appear here today to discuss my views on All-Terrain Vehicles (ATV's) and on the legislation that has been introduced by Congressman Barton. This legislation, I would note, has strong bipartisan support.

Since the Commission first authorized its imminent hazard action in December 1986, I have been a strong proponent of measures that would allow consumers to voluntarily return three-wheeled ATV's and adult-sized ATV's purchased for use by children under 16 years of age for a reasonable refund. I voted against the ATV Final Consent Decree, in large part, because it does not contain a refund provision. Absent this relief, I do not believe that the decree will truly protect the consumer; it will not result in the elimination or adequate reduction of the imminent, unreasonable and life-threatening hazards posed by ATV's.

I fully realize that all negotiations represent a process of give and take, and that all settlements require compromise. In deciding what compromises to make, however, the ultimate objectives being sought must govern. This is particularly true when one of the parties sitting at the negotiating table is a Federal health and safety agency which is entrusted with protecting the public interest. When an issue is so fundamental to the ultimate objective being sought, as I believe the refund remedy is to the protection of the American public, it simply cannot be compromised without compromising the entire action.

In the case of ATV's, the ultimate objective sought is clear: to protect the public including the thousands of children who ride ATV's, by implementing remedies that will demonstrably reduce the toll of injuries and deaths. In my view, this ultimate objective has been fatally compromised by the Commission's failure to negotiate a provision in the Final Decree allowing consumers to return three-wheeled ATV's and adult-sized ATV's purchased for use by children under 16 for a reasonable refund. Without the refund, consumers are not obtaining the remedies necessary given the nature and severity of the hazards presented by ATV's.

If three-wheeled ATV's are hazardous enough to stop their sale, then certainly the millions of consumers who already own them should be given the opportunity to return them. If all adult-sized ATV's are hazardous enough to now proscribe their use by children, albeit through labeling requirements, then certainly the parents of those children who currently operate them should be given the opportunity to return them, sending a strong message to their children that ATV's are not toys.

Critics of an ATV refund have questioned whether a refund will be effective in reducing injuries and deaths. Frankly, I find this criticism disingenuous. Simple logic tells us that if an unsafe product is removed from the hands of a consumer through a refund, the likelihood of sustaining injury and death has been totally eliminated. The same cannot be said of remedies such as warnings, notice and even training, where the possibility of injury and death while reduced, still remains.

Even if recalled ATV's were resold, a proposition which I find unlikely because of product liability considerations, a recall which targeted population groups at risk, specifically children under 16 years of age, would significantly reduce the toll of ATV injuries. In this regard, information developed by the Commission staff indicates that even if recalled three-wheeled ATV's were resold, but only to drivers 16 years or older, injuries would decrease. Thus if all three-wheeled ATV's used by children under 16 were repurchased and resold to drivers 16 and over, and estimated 16,100 emergency room treated injuries would be prevented.

This information further indicates that if recalled three-wheeled ATV's were not resold, a scenario I find more probable again because of liability considerations, the injury rate would decrease dramatically. For example, the Commission staff believes that 33,900 emergency room treated injuries (or 4.5 injuries per 100 ATV's) could be totally eliminated if all three-wheelers used by children under 16 and 30 percent of three-wheelers used by drivers 16 or older were repurchased, not resold, and replaced by four-wheeled ATV's. Also for this injury reduction to occur, 30 percent of the four-wheeled ATV's used by children under 16 years would be repurchased and resold to drivers 16 years or older.

It should be noted that the injury reduction figures I have just cited apply only to hospital emergency room treated injuries. These figures do not include the number of deaths that could be prevented through a refund remedy if the ATV's used by children under 16 were not replaced or the number of medically attended injuries treated outside of hospital emergency rooms that could be prevented.

In the face of concrete, quantifiable injury reduction figures such as these, I find it amazing that the Commission has turned its back on a refund remedy and instead has endorsed an agreement limited to notice, warning and training; remedies whose effectiveness in reducing injuries and deaths is debatable. This position is even more untenable when it is remembered that the population at greatest risk, and that suffers almost half of the injuries and deaths, are children.

I do not mean to minimize the importance of the notice, warning and training remedies that are contained in the Final Decree. Obviously, any and all measures that will result in fully informing consumers of the hazards presented by ATV's should be taken. Moreover, while I still have reservations about those provisions, I do believe the notice, warning and training requirements in the Final Decree are significantly better than those contained in the Preliminary Decree. These provisions present a more comprehensive, and hopefully effective warning program. Although these measures should and could have been voluntarily implemented by the ATV industry years ago, I believe the intense scrutiny given to the terms of the Preliminary Decree has resulted in an improved final product. In this regard, I am also pleased that the consumer verification form has been eliminated from the Final Decree, apparently in response to the strong concerns voiced by its critics.

In sum, to a limited extent the decree generally appears to be a positive first step. Unfortunately, it simply does not go far enough. In my view, the next step must be taken by Congress. Legislation requiring a refund remedy for three-wheeled ATV's and for adult-sized ATV's purchased for use by children under 16 years of age should be immediately enacted by Congress. Only then can we be confident that we have taken all necessary measures to protect the American consumer.

Mr. FLORIO. Let me thank the Commissioners for their presentation. Just to get the lineup straight, it is my understanding that two of the Commissioner's are generally supportive of the legislation that we are talking about now as a supplement to the existing Consent Decree.

Let me just go down the line. I thought, Commissioner Graham, you were fairly——

Ms. GRAHAM. Mr. Chairman, I do support the legislation. However, I feel that it would be good to include adult-sized ATV's that were purchased for children under 16.

Ms. DAWSON. To the extent that it tracks with my earlier statements, obviously my position is that refunds are necessary.

Mr. SCANLON. I would oppose the refund, Mr. Chairman, because I don't think a defect has been proven. We have studied this issue now for 3 years, and we have the engineers here who can address that more adequately than I. But for that reason, I would oppose the refund.

I think the performance standard element is terrific. I think Congressman Barton has included everything that we certainly would include in that. However, I would like to see if this Consent Decree is going to work and give the benefit of this time to the industry to see if they will perform.

The Consent Decree states that they will negotiate within 4 months, a performance standard. This would be the easiest way, and less costly way I think to obtain that standard. If that happens, then we will not need that part of the legislation.

Mr. **Florio**. Mr. Chairman, what have you imposed for your own standard, how do we determine what working is? I mean, are we talking about——

Mr. **Scanlon**. This Consent Decree will be overseen by a Federal judge. If we don't have what we want within the timeframe that they want——

Mr. **Florio**. What is it that we want in terms of a determination as to the adequacy of banning particularly perspective sales?

Mr. **Scanlon**. It's almost identical to Mr. Barton's bill, and we have submitted it to the industry already.

Mr. **Florio**. I reject part of what you have offered as the rationale for opposing the legislaticn, that somehow it will send a signal to others in the industry that they should not enter into negotiations because Congress may very well supersede the agreements by virtue of legislation.

I think, in this whole experience, we are sending a much better message to industry. It is that in fact what has occurred in this ATV experience is totally unacceptable from this point forward. The idea, and this Commission was unfortunately part of it, of just waiting and waiting and waiting for voluntary standards to come forward, having the voluntary standards come forward and ultimately the Commission declaring them—at least by a majority regarding those voluntary standards—as being woefully inadequate, is an ineffective process.

Having the Commission again in a split manner, make specific suggestions as to action to be taken; having the Commission not enact those regulations but shifting it to another governmental agency could take a prolonged period of time to evaluate whether anything was going to be done.

I think those are the course of events that we want to disabuse people of, the idea that that is an acceptable course of events. So I think the Congress taking the role that some would like it to take, is going to send a much more forceful message to industry, and that no one should accept the fact that if the Congress acts in the way that Mr. Barton chooses us to act, that that is going to send the wrong message in this case. It is going to send the right message to industry.

Let me yield to the gentleman from Texas at this point.

Mr. **Barton**. Thank you, Mr. Chairman. I have got so many questions that if I literally ask every one, we would be here until 5 p.m.

Mr. **Florio**. Mr. Barton, let me make this suggestion. What we are going to do—and I trust that the Commission will have no difficulty—in the event that any of the members sees fit to either through the Chair or directly submit questions in writing, the Commission, I trust, will respond to them as expeditiously as possible.

Mr. **Scanlon**. We would be delighted to do so.

Mr. **Florio**. I think all the members may take that into account.

Mr. **Barton**. I think this is a very important panel, because they are the Commissioners, they are the people that have been working on this issue with their staff. They should be the experts and I am going on the assumption that they are the experts. Some disagree with that assumption, but I, as a basis point, am going to do that.

My first question is, how many of you Commissioners have ever attempted to ride a three-wheel ATV. Raise your hand.

[A show of hands.]

Mr. **Barton**. All right. I am told what happened the first time you rode one, Mr. Scanlon.

Mr. **Scanlon**. Tell me what happened to me. I am not aware of any incident.

Mr. **Barton**. I have been told that the first time you attempted to ride one that you had an accident of some sort and got off it and said you would never get on one again.

Mr. **Scanlon**. No, that's not true at all.

Mr. **Barton**. You have never had any kind of——

Mr. **Scanlon**. No accident whatsoever. I don't know who told you that. I tried an ATV in 1985, I believe, with our engineers at our lab in Gaithersburg, Maryland. I had no accident or near-accident.

I must say that I did find it difficult to use and, from that first riding experience, I knew that training was imperative. So I was not surprised when the Commission collected extensive data that showed the 13 to 1 ratio of those persons who were injured within the first month of operating; those who had training were outnumbered by those who did not.

That's one of the things that I am most delighted with in this Consent Decree, that this training will be provided to every new purchaser and his or her family. In fact, purchasers going back 12 months.

Mr. **Barton**. Your first experience, while it did not end in an accident, at least even as watered down as you have just reported it, it scared you a little bit; is that safe to say?

Mr. **Scanlon**. I wasn't scared, no. It was an unusual experience. I am not a motorcycle rider, so it was.

Mr. **Barton**. You had an unusual experience, unusual but pleasant. We will let that be part of it.

Would Ms. Dawson or Ms. Graham like to comment on your first experience on a three-wheeler?

Ms. **Dawson**. My first experience on a three-wheeler, was the same day that the Chairman rode his. Again, I would have to say it was unusual, unique, and I'm a very cautious person so I didn't try to do too many things with it.

However, I subsequently did take the course that was offered by the SVIA. I spent almost all day with the vehicle and with the instructor. This was a three-wheeler. Subsequent to that, I have also had an opportunity to ride on the dunes at Pismo Beach, California under the supervision of experienced trainers.

I will have to tell you that sometimes I was a little scared. Again, I am a very cautious person so I didn't take any chances.

But while I was there on the dunes, I did see people taking chances and having accidents.

Fortunately none of them were serious injuries, but it was something you could see happening all around you. Subsequent to that, I have gone back to our lab and have ridden most of the vehicles that we have out there, both three and four-wheelers.

Mr. **Barton**. Ms. Graham.

Ms. **Graham**. Congressman Barton, I have ridden both three-wheelers and four-wheelers. I took the course and the more I got to know about ATV's, the less I wanted to ride them. I was watched like a hawk by the Commission staff as I was taking the training course, and at one point they prevented me from breaking my leg when I went up a hill and immediately put my foot on the ground in order to stop the machine and the machine started coming after my leg.

Mr. **Barton**. The next question is, who is the expert on this chart?

Mr. **Marchica**. I will explain whatever you need to have explained.

Mr. **Barton**. Again, it is an assumption, but I am assuming that this is a chart to show that ATV's are becoming more safe to operate and in some sense by looking at that chart we should feel satisfied that a lot is being done in the safety area; is that the purpose of that chart?

Mr. **Marchica**. No, sir, not at all. The purpose of that chart was the result of a question posed to us by Congressman Barnard for a hearing he held in January, where he wanted to know what was going on.

We asked the staff to look at the data and tell us what was happening. By no means does this show that the Agency is satisfied with the level of injuries.

Mr. **Barton**. Well, I am happy to know that. It is the first time that I have seen it to my knowledge. I may have seen a draft of it. I look at that and I see an injury rate of 2 percent which is extraordinarily high. I wouldn't get on an airplane to Texas if the accident rate was 2 percent.

I see just by simple multiplication, the number of accidents per year will be in the neighborhood of 60,000 in the year 1992. If that chart which you just said is not, but if it were purported to show an increase in safety it would be a joke.

If it is simply to show the facts as you think that they are going to be, then I will accept it as a valid document.

Mr. **Marchica**. That is correct. That is what it was intended to show. What it also shows is that you are seeing a population of three-wheelers that are being taken out of use; there are more four-wheelers in use; and there are fewer sales of all terrain vehicles.

In addition, you are seeing a population of ATV users that are much more experienced. That is the key variable, we believe, the experience variable.

Mr. **Barton**. I would like to address this question to Commissioners Dawson and Graham. I am told that there are some internal documents in your Agency that show that a refund provision could be cost effective. Would either of you Commissioners care to comment on that?

Ms. **Dawson**. There were some documents provided internally, which I really haven't had an opportunity to study that carefully. They are quite complex in their execution. Maybe Commissioner Graham could speak to that more intelligently than I, because I haven't had an opportunity to study them that closely.

Ms. **Graham**. Congressman, the staff provided last week, some scenarios for refunds. Two of them did come out as a major benefit. One was if all ATV's used by children under 16 years of age were returned and are resold for use by people over the age of 16, that benefit would be $181 million.

The second is if all three-wheelers driven by children under 16 are returned and 30 percent of the remaining three and four-wheelers were returned, that the net benefit would be $89 million.

Deaths were not factored into that, and I would suspect that if they were, all of the five scenarios might come out cost beneficial.

Mr. **Barton**. Mr. Chairman, I would like to officially request for the record, any of the internal documents that the CPSC has prepared dealing with the cost effectiveness of the various refund proposals.

I think that would be very helpful to the committee if not at the subcommittee level, the full committee level.

Mr. **Florio**. We will work with the members to frame an appropriate request and submit the request.

[Testimony resumes on p. 70.]

[The information follows:]

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

-8 MAR 1988

To: Nicholas V. Marchica, OEX
Thru: Warren J. Prunella, AED, Economic Analysis WJP

From: Gregory B. Rodgers, ECPA, GR

Subject: The Economic Impact of Several ATV Recall Options

We have been asked to provide an assessment of several possible ATV recall options. Since there are an unlimited variety of conceivable options, we are examining five scenarios which may illustrate the range of possible impacts. Injury reduction estimates used to calculate benefits were provided by the Directorate for Epidemiology.

Crucial to the assessments are the estimates of the numbers of ATVs likely to be returned. In two of the scenarios we assume that 30 percent of ATVs will be returned. This is probably an upper bound of the number of ATVs that would be returned, and one that is probably not attainable absent some inducement such as a premium. In addition, we also examine several scenarios in which either all three-wheelers used by children, or all ATVs used by children, are returned during a recall. These latter scenarios are probably unrealistic because it is unlikely that all ATVs driven by any class of drivers would be returned. However, the results of these scenarios represent what might be considered by some an ideal outcome of a recall effort. Also important in the assessments is the assumption that the number of deaths will not be affected by any redistribution of ATVs caused by the recall.

Finally, we should mention that the magnitudes of the costs and benefits of the scenarios discussed below depend on the proportions of ATVs returned under a recall. Consequently, if we have overestimated the number of ATVs that would be returned, the estimated costs and benefits will probably also be overestimated, but not disproportionately.

Scenario A. Recall with resale; 30 percent of eligible ATVs Returned.

For the first scenario we assume that the recall applies to all three-wheeled ATVs, four-wheeled ATVs driven by children less than 16, and that the ATVs can be resold. We further assume that 30 percent of the eligible ATVs will be returned for a refund. Under these assumptions, about 520,000 ATVs would be returned; 390,000 three-wheelers and 130,000 four-wheelers.

The Directorate for Epidemiology estimated that the number of emergency room treated injuries would increase by about 3,500, relative to the status quo under this scenario. There would probably also be another 5,250 medically attended injuries. Thus, there do not appear to be any net benefits: according to the Injury Cost Model, injury costs might increase by about $43,750,000. There may, however, be a change in the age distribution of those injured. Even though total injuries may increase, fewer injuries would involve children.

The costs under this scenario would be considerable. Since the ATVs returned will be resold, the major costs are transactions costs. These are the costs to manufacturers or their representatives (dealers for the most part) of having to buy back the ATV, completing any paperwork necessary for the recall, and then actually selling the ATV. Moreover, these are real costs to society in the sense that these resources would not be available for other alternative uses. (Since the dealers might have to pay, on average, about $750 dollars for each returned ATV under the recall scenarios, they are unlikely to junk an ATV that can be resold.) We do not know precisely what these transaction costs will be, but $75 per ATV may be a reasonable estimate. At $75 per ATV, the costs could amount to about $39 million.

This scenario thus results in large costs associated with an increase in injuries and injury costs.

Scenario B **Recall with resale; all three-wheelers driven by children under 16 are returned, and 30 percent of remaining eligible three and four-wheeled ATVs are returned.**

Here we assume that all three-wheeled ATVs driven by children under 16 are returned, as well as 30 percent of other three-wheelers and 30 percent of the four-wheeled ATVs driven by children. Although it is unlikely that all three-wheeled ATVs driven by children would be returned, the results of this scenario represent what some would characterize as close to an ideal outcome of a recall effort.

This scenario would lead to the return of about 750,000 ATVs which can be resold to the public. The scenario is similar to A, except that we assume all three-wheeled ATVs used by children are returned, rather than 30 percent.

The Directorate for Epidemiology estimated that this scenario might lead to a reduction of about 11,400 emergency room treated injuries relative to the status quo. The benefits of this injury reduction, in terms of reducted injury costs, would amount to about $58,000,000. In addition, about 25,050 other medically attended injuries, treated outside of hospital emergency rooms, might be prevented, reducing injury costs by another $87,000,000. Total benefits will, therefore, be about $145,000,000. Injuries are lower in scenario B than in scenario A because more of the ATVs used by children are returned and transferred to older drivers.

Since the ATVs can be resold, the primary costs of the scenario would be the transaction costs. At $75 per vehicle, the costs of the refund would amount to about $56,250,000. Consequently, in this scenario the benefits are about $89 million more than the costs.

Scenario C: **Recall with no resale of three-wheelers; 30 percent return.**

In scenario C we assume that the recall applies to all three-wheeled ATVs, and four-wheeled ATVs used by children less than 16. We also assume that 30 percent of the ATVs will be returned, and that three-wheeled ATVs returned cannot be resold. This scenario is identical to A, except that the three-wheelers returned cannot be sold back to the public. About 520,000 ATVs would be returned under this scenario; 390,000 with three-wheels that would be taken out of use and replaced by four-wheelers.

Epidemiology has estimated that scenario C would reduce emergency room treated injuries by about 12,300, relative to the status quo. In addition, there might be another 18,475 other medically attended injuries prevented. The benefits of preventing these 30,750 injuries might be about $153,750,000.

The costs of scenario C include the transaction costs associated with the recall and reselling of the estimated 130,000 four-wheeled ATVs returned, plus the costs of recalling 390,000 three-wheeled ATVs which would have to be junked. The transaction costs on the ATVs which could be resold would be about $9,750,000. We do not know what the recall price to manufacturers would be, but (based on available "Blue Book" values) $750 may not be an unreasonable average, assuming that the average age of most three-wheeled ATVs returned would be about three or four years. Transaction costs associated with recalling ATVs that would be junked might add another $50 per ATV to the costs, for a total of about $800 per ATV returned. (If the ATVs have a positive scrap value the cost associated with taking them out of use would be reduced by that scrap value.) At $800 per ATV, the costs of recalling three-wheelers without resale, may be about $312,000,000. Thus the total costs of the recall might be about $321,750,000, as compared to benefits of about $153,750,000, for a net cost to society of about $158 million.

Scenario D: **Recall with no resale of three-wheelers; all three-wheelers driven by children will be returned, as well as 30 percent of the remaining three-wheelers and 30 percent of the four-wheelers driven by children.**

In scenario D we assume that all three-wheeled ATVs driven by children under 16 are returned, as well as 30 percent of other three-wheelers and 30 percent of four-wheeled ATVs driven by children. Scenario D is B, without the resale of three-wheeled ATVs returned. Under these assumptions, about 750,000 ATVs would be returned, of which about 620,000 would have three wheels and 130,000 would have four wheels.

Epidemiology has estimated that emergency room treated injuries would be reduced by about 33,900 under this scenario. In addition, there might be another 50,850 medically attended injuries treated outside of hospital emergency rooms that might be prevented. The benefits of preventing these injuries may amount to about $423,750,000.

The costs of D include the transaction costs associated with reselling the estimated 130,000 four-wheelers and the capital loss associated with taking the 620,000 three-wheelers out of use. The transaction costs would amount to about $9,750,000 and the costs of eliminating three-wheelers might amount to about $496,000,000. Thus, we may compare the benefits of about $423,750,000 to costs of about $505,750,000, for a net loss to society of about $80 million.

Scenario E: **Recall with resale; all ATVs used by children less than 16 are returned and resold for use by those over 16.**

In scenario E we assume that ATVs used by children less than 16 are returned under the recall. The ATVs can be resold, but not for use by children under 16. Although this scenario is unlikely, the outcome illustrates the extent to which young people sustain ATV injuries.

In this scenario, about 765,000 ATVs are returned. The transaction costs would therefore amount to about $57,375,000.

Epidemiology estimates a net reduction of about 19,100 emergency room treated injuries as a result of the recall. In addition, another 28,650 other medically attended injuries may be prevented because of the recall effort. The benefits of the reduced injuries would amount to about $238,750,000. Thus, benefits of $238,750,000 compared to costs of about $57,375,000 result in a net benefit to society of about $181 million.

Although the outcome described by this scenario is unlikely, it focuses on the magnitude of the hazard faced by children.

Conclusions

A table summarizing the cost and benefit comparisons is shown on the next page. Only in scenarios B and E are the estimated benefits greater than the costs of the recall. Both of these outcomes are probably unrealistic in the sense that they assume all ATVs driven by a single class of drivers would be returned. In B it is assumed that all three-wheelers used by children under 16 are returned, and in E it is assumed that all ATVs used by children are returned. However, these scenarios do show that a recall of ATVs that successfully targeted children could have a favorable economic impact.

Results are influenced by assumptions about the age distribution of users of ATVs after a recall, by estimates of what proportion of used ATV buyers may be inexperienced, and by estimates of the costs of the recall effort. If, for example, fewer children would ride ATVs after a recall effort, or buyers of used ATVs tend to be more experienced than we assume, the benefits would be greater. If, on the other hand, more children would ride the resold ATVs, or if buyers of used ATVs tend to be less experienced than assumed, then the benefits would be less. Similarly, estimates of the costs of the recall efforts affect the comparisons of costs and benefits.

Summary of Cost-Benefit Results[1]

Scenario	Total Costs	Total Benefits	Net Benefits (Costs)
A	$39,000,000	$-43,750,000	($82,750,000)
B	56,250,000	145,000,000	$88,750,000
C	321,750,000	153,750,000	($168,000,000)
D	505,750,000	423,750,000	($82,000,000)
E	57,375,000	238.750,000	$181,375,000

[1] Scenario recap:

A. Recall with resale; 30 percent of all 3-wheeled vehicles and 30 percent of 4-wheeled ATVs used by those under 16 returned.

B. Recall with resale; all 3-wheeled vehicles driven by those under 16, 30 percent of remaining 3-wheeled vehicles, and 30 percent of 4-wheeled vehicles driven by children under 16 returned.

C. Recall with no resale of 3-wheelers, but resale of 4-wheelers; same return as A.

D. Recall with no resale of 3-wheelers, but resale of 4-wheelers; same return as B.

E. Recall with resale; all vehicles used by children under 16 returned, and resold for use by those over 16.

Source: Directorate for Economic Analysis, 1988.

TED STATES GOVERNMENT

MEMORANDUM

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON,D.C. 20207

MAR 3 [illegible]

TO : Nicholas Marchica, ATV Task Force

Through: Dr. Robert D. Verhalen, AED, Epidemiology

FROM : Rae Newman, EPHA RN

SUBJECT: Repurchase of ATVs by Manufacturers

In response to a request we anticipate receiving from Capitol Hill, we have calculated estimated injuries for five options involving repurchase of ATVs by manufacturers.

The assumptions and results of this evaluation are discussed for each of the five options in the sections following and summarized in the attached Table. The options evaluated the manufacturer repurchase of 3 combinations of three and four-wheeled ATVs under different conditions; these included assumptions that all repurchased ATVs were resold either to the general public or to drivers 16 years or older, and assumptions that three-wheeled ATVs were not resold. All owners of repurchased ATVs replaced them with four-wheeled ATVs.

Based on these four year projections, the highest injury reductions would occur under the following conditions:

- Not reselling three-wheeled ATVs repurchased by manufacturers (Options C and D).
- Limiting resale of repurchased ATVs to drivers 16 years or older (Options B, D, and E).
- Maximizing repurchase of three and four-wheeled ATVs used by drivers less than 16 years old (Option E).

The options with the highest injury reduction per 100 ATVs repurchased were Option D (4.5 injuries per 100 ATVs), Option E (2.5 injuries per 100 ATVs) and Option C (2.4 injuries per 100 ATVs).

Table
Effect of Manufacturer Repurchase of ATVs
on Hospital Emergency Room Treated Injuries Over a 4 Year Period
(1988-1991)

OPTIONS	ATVs REPURCHASED BY MANUFACTURER			ATVs RESOLD	CHANGE IN ESTIMATED INJURIES (1988-1991)			
					INCREASE		DECREASE	
	Type	Percent	Number		Number	Per 100 ATVs Repurchased	Number	Per 100 ATVs Repurchased
A	3-Wheeled,	(30%)	390,000	Yes (All Drivers)	4,400	1.1		
	4-Wheeled, Drivers <16	(30%)	128,000	Yes (All Drivers)			900	0.7
	Total		518,000		3,500	0.7		
B	3-Wheeled, Drivers <16 Drivers ≥16	(100%) (30%)	627,000	Yes (Drivers ≥16)			10,700	1.7
	4 Wheeled, Drivers <16	(30%)	128,000	Yes (Drivers ≥16)			900	0.7
	Total		755,000				11,600	1.5
C	3-Wheeled,	(30%)	390,000	No			11,400	2.9
	4-Wheeled, Drivers ≤16	(30%)	128,000	Yes (All Drivers)			900	0.7
	Total		518,000				12,300	2.4
D	3-Wheeled, Drivers <16 Drivers ≥16	(100%) (30%)	627,000	No			33,000	5.3
	4-Wheeled, Drivers <16	(30%)	128,000	Yes (Drivers ≥16)			900	0.7
	Total		755,000				33,900	4.5
E	3-Wheeled, Drivers < 16	(100%)	338,000	Yes (Drivers ≥16)			16,100	4.8
	4-Wheeled, Drivers <16	(100%)	426,000	Yes (Drivers ≥16)			3,000	0.9
	Total		764,000				19,100	2.5

Option A

Manufacturers would repurchase 30 percent of all three-wheeled ATVs (390,000) and 30 percent of the four-wheeled ATVs used by drivers under 16 years old (128,000). The resale of the three-wheeled ATVs would result in an increase of 4,400[1] injuries; the resale of the four-wheeled ATVs would result in a decrease of 900 injuries. The net effect would be an increase of 3,500 emergency room treated injuries or 0.7 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the ATVs would be resold to drivers with less than one year of experience. The risk of injury for the resale group would be lower than for the original group as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-Wheeled ATVs		Four-Wheeled ATVs		
		Status Quo All Drivers	Resale All Drivers	Status Quo Drivers < 16	Resale or Replacement All Drivers	Resale or Replacement Drivers < 16
1988	under 1 year	13.2	11.8	7.6	3.6	7.1
	1 year or more	2.8	2.4	2.4	1.6	2.2
1989	1 year or more	2.6	2.2	2.3	1.6	2.1
1990	1 year or more	2.7	2.4	2.4	1.6	2.2
1991	1 year or more	2.6	2.2	2.2	1.4	2.0

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown below:

	Three Wheeled ATVs	Four Wheeled ATVs
1988	100%	100%
1989	83%	94%
1990	65%	76%
1991	46%	59%

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[1] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

Option B

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years old (338,000) and 30 percent of three-wheeled ATVs used by drivers 16 years or older (289,000), a total of 627,000 ATVs. Manufacturers also would repurchase 30 percent of four-wheeled ATVs used by drivers under 16 years old (128,000). The 3-wheeled ATVs would be resold to drivers 16 years or older, resulting in a decrease of 10,700 injuries[1/] and the four-wheeled ATVs would be resold to drivers 16 years or older, resulting in a decrease of 900 injuries. The net effect would be an decrease of 11,600 emergency room treated injuries or 1.5 injuries per 100 ATVs repurchased.

These projection assumed that one-third of the ATVs would be resold to drivers with less than one year of experience. The risk of injury for the resale group would be lower than for the original owners as shown in the Table below:

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-wheeled ATVs			Four-wheeled ATVs		
		Status Quo		Resale	Status Quo	Resale or Replacement	
		Drivers <16	Drivers ≥16	Drivers ≥16	Drivers <16	Drivers<16	Drivers≥ 16
1988	under 1 year	16.4	10.5	10.0	7.6	7.1	2.4
	1 year or more	5.4	2.0	1.9	2.4	2.2	1.3
1989	1 year or more	5.0	1.9	1.8	2.3	2.1	1.3
1990	1 year or more	5.2	2.0	1.9	2.4	2.2	1.3
1991	1 year or more	5.0	1.9	1.8	2.2	2.0	1.2

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

[1/] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

Option C

Manufacturers would repurchase 30 percent of all three-wheeled ATVs (390,000 ATVs) and would not resell them. The sellers would replace them with four-wheeled ATVs. Manufacturers also would repurchase 30 percent of four-wheeled ATVs used by drivers less than 16 years old (128,000 ATVs) and would resell them. The effect of the replacement of the three-wheeled ATVs by the four-wheeled ATVs would be an 11,400 reduction in the injuries. The resale of the four-wheeled ATV would result in a reduction of 900 injuries. The net effect would be a reduction of 12,300 emergency room treated injuries or 2.4 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the four-wheeled ATVs would be resold to drivers with less than one year of experience. The risk of injury for the ATVs replaced or resold would be lower than for the original groups as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

		Three-wheeled ATVs	Four-wheeled ATVs		
Year	Experience	Status Quo	Status Quo	Resale or Replacement	
		All Drivers	Drivers <16	All Drivers	Drivers <16
1988	under 1 year	13.2	7.6	3.6	7.1
	1 year or more	2.8	2.4	1.6	2.2
1989	1 year or more	2.6	2.3	1.6	2.1
1990	1 year or more	2.7	2.4	1.6	2.2
1991	1 year or more	2.6	2.2	1.4	2.0

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

Option D

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years of age (338,000) and 30 percent of three-wheeled ATVs used by drivers 16 years or older (289,000) a total of 627,000 ATVs but would not resell them. The three-wheeled ATVs would be replaced by four-wheeled ATVs, resulting in a reduction of 33,000 injuries. Manufacturers would repurchase 30 percent of four-wheeled ATVs used by drivers under 16 years (128,000) and resell them to drivers 16 years or older. This action would result in a decrease of 900 injuries. The net effect would be a reduction of 33,900 emergency room treated injuries or 4.5 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the four-wheeled ATVs were resold to drivers with less than one year of experience. The risk of injury for the ATVs replaced or resold would be lower than for the original groups as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-wheeled ATV		Four-wheeled ATVs		
		Status Quo		Status Quo	Resale or Replacement	
		Drivers < 16	Drivers ≥ 16	Drivers < 16	Drivers < 16	Drivers ≥ 16
1988	under 1 year	16.4	10.5	7.6	7.1	2.4
	1 year or more	5.4	2.0	2.4	2.2	1.3
1989	1 year or more	5.0	1.9	2.3	2.1	1.3
1990	1 year or more	5.2	2.0	2.4	2.2	1.3
1991	1 year or more	5.0	1.9	2.2	2.0	1.2

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

Option E

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years (338,000) and would resell them to drivers 16 years or older.[1] This action would result in a decrease of 16,100 injuries. Manufacturers also would repurchase all four-wheeled ATVs used by drivers under 16 years (426,000) and would resell them to drivers 16 years or older. This action would result in a decrease of 3,000 injuries. The net effect would be a reduction of 19,100 emergency room injuries or 2.5 injuries per 100 ATVs repurchased.

The projections were based on the risk assumptions described in Option B.

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[1] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO: Nicholas V. Marchica, EX — March 7, 1988
THROUGH: Warren J. Prunella, AED, EC
FROM: Charles L. Smith, ECPA CS
SUBJECT: Resource Implications of Implementing the Refund Provisions of the ATV User Safety and Equity Act

On February 24, 1988, Representative Barton of Texas introduced the "ATV User Safety and equity Act." If enacted, this Act calls for the CPSC to promulgate a rule that prescribes the procedures for returning 3-wheeled ATVs for the purposes of obtaining a refund and procedures for determining the amount to be refunded. Manufacturers would be prohibited from reselling the 3-wheeled ATVs (banned under Section 8 of the CPSA). If manufacturers do not provide refunds according to the provisions established by the CPSC, they would be considered to be in violation of Section 19(a)(5) of the CPSA. This memorandum presents a discussion of issues relating to the implementation of the refund provisions of the Act (including notifying owners of ATVs that they are entitled to refunds), and of the provisions prohibiting resale of ATVs that are returned. This discussion reflects preliminary staff consideration of the issues involved, with particular reliance on estimates prepared by the Directorate for Field Operations for resources needed to implement the refund provisions.

Under the Act, the authorized dealers probably would be designated as the agents of the manufacturers for the purposes of return for refund; there are about 5,000 dealers. Implementation costs would be closely related to the magnitude of the compliance verification effort, including the percentage of dealers that will be subject to compliance checks, and the extent to which customers of dealers are contacted as an element in the compliance verification program.

Implementation costs would also be dependent on the extent to which CPSC resources are required to respond to inquiries and to arbitrate disputes (such as concerning the amount of refund to which consumers are entitled). To the extent practicable, arbitration of disputes would be handled by States; however, the involvement of CPSC staff will be unavoidable. The likelihood of disputes about the amount of refund could be minimized by establishing a formula for determining the amount of refund that does not allow subjective judgments to enter into the transaction. We may also expect greater compliance (with resulting reductions in implementation costs) if provisions are adopted to reduce the economic burden on the dealers who are authorized to receive the returned ATVs (e.g., by giving owners a copy of a voucher, and having refund checks sent from the manufacturer; making sure dealers do not bear the transactions costs of the return).

As additional background for the discussion, the following circumstances may be likely under the Act:

Perhaps 30% to 50% of 3-wheeled ATVs in use would be returned to the dealers for refund; this would total 390,000 to 650,000 vehicles.

Owners would be offered a limited period during which they may accept the refund offered under the Act (perhaps 30 to 90 days).

If 30% to 50% of vehicles are returned, the average number returned to authorized dealers may be 80 to 130 during the time period that refunds are offered.

The amount of refund will be determined by a formula to be developed that will be based on the trade-in or resale value of the vehicle. The information for determining the refund value will be based on published information ("Blue Book") and the formula for determining the refund due will be provided to the vehicle owner by the authorized dealer (or the CPSC).

Some action on the part of the manufacturer or its agents to make certain that the ATVs can not be resold will need to be taken; and confirming evidence that the action was taken should be provided.

Ross Koeser of the Directorate for Field Operations has provided preliminary estimates of Field resources necessary to implement the Act. Estimates have been made based on different assumptions about the percentage of dealers that are subject to compliance checks. The low-medium resource estimates are based on the assumption that 10 percent of dealers are subjected to checks. These calculations are as follows:

1. CPSC Inspection of distributors: 5 distributors X 15 hours = 75 hours

2. States Inspect Dealers: 500 dealers X $100 = $50,000

3. States contact consumers (recall effectiveness check): 2,000 consumers X $25 = $50,000

Based on 4 from each of the 500 dealers that were covered by the recall check.

4. CPSC Regional Office follow-up
   to state work: 250 inspections X 10 hours = 2,500 hours

5. Regional Office
   complaint follow-up: 500 complaints X 5 hours = 2,500 hours

6. Regional Office guidance
   to consumers and dealers: 8,000 inquiries = 2,000 hours

7. CPSC Travel Costs: 755 visits X 75 miles X $.21 = $11,891

8. Regional Office and
   Field Operations Management: 4 SM's - 400 hours

9. Public Affairs time: 4 SM's - 400 hours

TOTALS: 8 FTE's, $100,000 in State/Local Contract Funds,
$12,000 in travel costs

In addition to resources required by the Field, other non-Field Headquarters time would be required. Perhaps most of these resources would involve reallocation of staff to respond to inquiries and complaints received on the CPSC Hotline. The number of additional calls generated by the refund provision of the Act, the period of time over which the calls may be receieved, and the extent to which they would be concentrated, can not be predicted with certainty. Headquarters time reallocated to the Hotline might total 1 FTE for every 10,000 calls, but this will largely depend on how the additional burden is concentrated.

The low-medium estimates for Field resource needs are based on an assumption that 500,000 ATVs would be returned for refund. This seems reasonable for the purposes of resource estimation. Much of the total cost involved would be incurred for a wide range of return rate assumed. As noted, the estimates are based on subjecting about 10 percent of dealers to compliance checks; the magnitude of the implementation costs will be closely related to the percentage of dealers that are checked. For the purposes of projecting Commission resources needed, the upper bound would involve compliance checks of 100 percent of dealers. The Field believes it unlikely that all of these checks would be done by the States; it is assumed that half of the 4,800 dealers would be inspected by the States, requiring contract funds totaling $240,000; if States also call four consumers from the greater number of dealers covered by the compliance check, this would also require $240,000. The remaining inspections of 4,800 dealers and interviews of 9,600 consumers would be done by Field staff; this would require about 19,200 staff hours. Field time needed to follow up work by the States, to resolve disputes, and to respond to consumer and dealer inquiries may total 11,380 hours. Travel costs may total $61,200. Time required for Field management and public affairs may total 2,900 hours. The total Field resources needed for a program of this magnitude may be 32.5 FTEs, $480,000 in State and Local Contract Funds, and $61,200 in travel costs. Other CPSC headquarters resources, as discussed above, would also be required, although these would be minor in relation to Field resources.

Mr. **Barton**. I want to ask a question to our engineer here, Mr. Deppa. My bill has the provision that basically takes the standards that your group has been working on for a number of years and sets them up as kind of preliminary guideline standards.

It gives a year for CPSC and industry to work together to fine tune those standards, so to speak. If at that time there is no agreement, then these standards go into effect. In your opinion, in the 1 year time period assuming the bill were to become law, do you think the industry would work with you and would you be able to reach agreement, or do you think they would not work with you and these standards would have to go into effect?

Mr. **Deppa**. I guess the only fact I could draw on to answer that question is my past experience in working closely with the industry. I met with the industry in monthly meetings for a couple of years toward the development of a voluntary standard.

It wasn't until last summer, 1987, despite repeated requests, we finally were able to meet with the testing and development engineers from Japan. We had two meetings with them, and I think those were quite fruitful meetings. There was pretty good dialogue finally, engineer to engineer.

That's all. My personal opinion is that we didn't make very much progress in the past and I'm a little pessimistic about the future.

Mr. **Barton**. Because it is impossible to make progress, or they just don't want to make progress? Of course, they are going to have some witnesses later today, so I will give them an opportunity to answer that.

Mr. **Deppa**. Until we met with the Japanese engineers, I felt that we were being stonewalled. Progress just simply was not being made.

We had the two meetings in June and July with the Japanese engineers. A lot of ground got covered in the first meeting. The second meeting even more, they had gone home and done a great deal of testing and came back to us. They shared that data with us verbally, but not in written form, so I don't have it.

I think progress could be made; I am just pessimistic that since it hasn't been in the past that it would be in the future.

Mr. **Barton**. One final question. I know that it is early and we are just getting into this, but assuming that the standards as they are in my bill become the standards, would you care to make a comment on how costly it would be for them to make the changes and modifications necessary to meet the standards, assuming that it is not a recall and modification but placed in the new models as they come out.

Mr. **Deppa**. Yes, I think I can answer that. I am giving you my own answer, and I am not sure that our own economics people would necessarily agree completely with it. We have discussed that at great length internally.

I feel that as a prospective issue, it would not be terribly costly. Many of the items there are design provisions that require certain elements on the vehicle. Many of those things are already met by most vehicles. So there would not be an increase in cost in those.

Mr. **Barton**. I am a little hazy on the numbers, but my recollection is that if we had a standard that improved safety as little as 8 percent that it would be cost effective even if it costs up to several hundred or perhaps even $1,000 in modifications.

Can you provide those numbers? I have seen them and I am almost sure that they are part of some record that is not proprietary.

Mr. **Marchica**. Mr. Barton, in 1986 the average cost of injuries and deaths associated with an ATV was about $3,600. If you were to have a standard that was about 10 percent effective, you could justify perhaps $360 worth of changes for an all terrain vehicle.

I think that Roy can tell you that for $360 you can do a lot.

Mr. **Barton**. I have one final question, Mr. Chairman, and then I am going to yield back and submit the rest in writing. I want to ask Mr. Scanlon, your other two Commissioners appear to be very supportive of a refund and you don't, and you stated that you don't.

I think the chairman asked the question in a little bit different way of you. What would it take to convince you that we need a refund? You said the evidence doesn't indicate that a refund is in order yet. I just want to know your thought process.

Mr. **Scanlon**. We have to have proof, Mr. Barton, of a mechanical defect. We have had engineers studying this issue for 3 years and they say there is not a defect. If I were to vote for a refund under the provisions of the Consumer Product Safety Act—we are required under the statute, under section 15, to prove a defect. We haven't proven a defect.

Mr. **Barton**. We haven't proven a mechanical defect.

Mr. **Scanlon**. That's correct.

Mr. **Barton**. That's your standard. Your own engineers, at least in the privacy of my office, tell me that the physics on these things are just all wrong; that they are inherently unstable and that in order to make a turn on one of these suckers you have to move one way while it is going the other way and then lean back and lean forward and then you cross your fingers.

That is not a mechanical defect, but that is certainly within any reasonable definition of a defect, that is a defect in the product. In other words, they are designed to fail and they are not designed to succeed.

Mr. **Scanlon**. I must respectfully disagree with you. I don't think there is a defect. I have studied this issue for 3½ years. If there were a defect, I would have voted for more than a refund. I would have banned them.

Mr. **Barton**. Which we are going to do.

Mr. **Scanlon**. And recalled them. It is not there and I can't create it to——

Mr. **Barton**. As long as they make them out of good plastic and good steel, you are willing to let these things go on forever?

Mr. **Scanlon**. Not at all. What I am saying is that I think, with the Consent Decree that was just signed on Monday, there are many provisions of that 150 page document that will reduce injuries significantly.

Mr. **Barton**. I agree with that. I don't want to belabor the point. I just wanted to see what your definition of a defect is. I will ask the rest of my questions in writing, Mr. Chairman, and yield back the balance of my time.

Mr. **Florio**. The time of the gentleman has expired. The gentleman from Utah.

Mr. **Nielson**. Mr. Scanlon, H.R. 3991, Mr. Barton's bill, declares three-wheel ATV's to be banned as hazardous products. Do you consider that appropriate in view of the Consent Decree?

Mr. **Scanlon**. The Consent Decree does not allow the marketing of three-wheelers by a dealer——

Mr. **Nielson**. From this point on.

Mr. **Scanlon**. From this point on.

Mr. **Nielson**. But it does not ban them. This bill, however, would ban them as hazardous products. Do you consider that——

Mr. **Scanlon**. I think the Consent Decree accomplishes the same thing as Mr. Barton's bill.

Mr. **Nielson**. From this point on. What about those existing?

Mr. **Scanlon**. His bill also allows the resale privately of three-wheelers, as does the Consent Decree.

Mr. **Nielson**. It does however, as I read it, declare the three-wheel ATV's to be banned as hazardous products with no further sales.

Mr. **Scanlon**. That is correct. And our Consent Decree accomplishes that.

Mr. **Nielson**. I would like to ask Commissioner Graham a question. You have advocated a refund from the offset; is that correct?

Ms. **Graham**. Yes.

Mr. **Nielson**. Do you believe a refund is justified at least partially because the ATV manufacturers have had misleading advertising?

Ms. **Graham**. In part, Congressman, but not entirely.

Mr. **Nielson**. Can you cite some specific examples of misleading advertising?

Ms. **Graham**. Yes. Their ads suggest that the machines could be used by anyone to do virtually anything, and I believe that is misleading.

Mr. **Nielson**. Have you seen the advertisement for the Volkswagen Jetta that I mentioned before, that——

Ms. **Graham**. Yes.

Mr. **Nielson**. With all the weaving around the people and so on.

Ms. **Graham**. Yes.

Mr. **Nielson**. What about that advertising?

Ms. **Graham**. Congressman, I feel that there is one major and obvious difference there.

Mr. **Nielson**. Should we ban the Volkswagen Jetta?

Ms. **Graham**. I beg your pardon?

Mr. **Nielson**. Should we take action against the Volkswagen Jetta because of that misleading advertising?

Ms. **Graham**. No, I don't believe that we should, but I think there is a major difference. Children aren't allowed to drive cars and they are allowed to ride ATV's.

Mr. **Nielson**. How do you square your opinion of ATV purchasers how to get a refund when you don't say that about Volkswagen Jetta?

Ms. **Graham**. I feel the ATV's pose an imminent hazard and that the people have been misled. A refund would help in reducing the injuries and deaths, and it is my responsibility as a Commissioner of this Commission to address that issue.

Mr. NIELSON. Ms. Dawson, you agree with Ms. Graham in previous testimony about the danger of ATV's. Yet, you sided with Commissioner Scanlon to not require refund. How do you square those two—do I have a misperception of your previous statement?

Ms. DAWSON. I think a lot of people may have misperceptions about what my position is.

Mr. NIELSON. Would you clarify it, please?

Ms. DAWSON. Yes. I would love to. I did vote with Commissioner Graham originally on the December 1986 motion to go forward with the section 12 action. I don't believe that the Chairman voted with us, but he did indicate that he supported the section 12 action with the exception of a refund.

Subsequent to that, as you are well aware, we did refer the case to the Department of Justice. At that point, it was really out of the hands of individual Commissioners. It was up to the attorneys, our own general counsel and those at the Department of Justice, to come up with filing a complaint and ultimately negotiating the settlement.

I have no way of knowing whether or not refunds were part of the negotiation. I presume that they were, that this was something which was discussed at that time. My dilemma, if you will, was whether or not to accept this negotiated settlement, which in every respect is very much similar to what Congressman Barton's bill is trying to achieve, and would not require lengthy litigation and would immediately institute some safety measures, but on the other hand, losing the possibility of refunds.

If I had voted against this Consent Decree, which Commissioner Graham in her judgment decided, then we would have nothing. I felt as a public official that I couldn't make that choice, that it was my responsibility to vote to accept what we could get. I do feel that it is a lot.

Mr. NIELSON. May I liken your vote to the votes that we have to make. We have a red button and a green button. We don't have a maybe button. It appears to me that you have pushed the maybe button here. You are wanting to do something about the ATV's but you don't want to go all the way.

I am just wondering, are you sort of a compromise between the other two Commissioner's in this particular case?

Ms. DAWSON. No, I think I——

Mr. NIELSON. I am not saying that is bad. We have to compromise a lot of times. We can't do——

Ms. DAWSON. We do.

Mr. NIELSON. When we make our final vote it has to be one or the other.

Ms. DAWSON. May I say that maybe this issue is a classic example of how our system works. We are doing what we can do under our statutes. You people have additional legal authority that we don't have. Indeed, there is still the recourse of the courts.

So in their wisdom the founding fathers gave us lots of methods for dealing with these kinds of problems. We are a part of it, you are part of it, the courts are part of it and individuals are part of it, and I believe the States are too.

Mr. **Nielson**. I am having a hard time supporting this bill, H.R. 3991, in spite of the fact that I have tremendous respect for my colleague to my right here, Mr. Barton, one of the young aggressive members of this subcommittee and the full committee.

I still have to be convinced that people have to be somehow protected against their own negligence legislatively. It seems to me like a lot of the problems with ATV's in spite of the testimony we have heard this morning, is a matter of either negligence or taking unnecessary risks.

How do you feel about that? Could you quantify how many of the deaths that you have on the chart are because people used them at the wrong age and were too small to use the machines or, perhaps, used them in dangerous and show off ways. Do you have any data?

Ms. **Dawson**. As you pointed out and as Mr. Barton pointed out, we are the ones who have been studying this issue very closely for a long time. I must tell you that I was one of the ones that was very skeptical in the beginning with the same feeling that you have expressed, that we can't protect people from everything.

On the other hand, the evidence is so overwhelming that there are cases where—as one of our earlier witnesses has described—these accidents can occur when even every precaution is taken. Clearly, there are cases where there is abuse, and I am not denying that. I don't think our staff denies that.

But on the other hand, we also have to ask ourselves the question, would people have been willing to take these risks if they really knew the dangers.

Mr. **Nielson**. A comment was made this morning by one of the witnesses that said her mother got a letter 4 years after her husband had been killed, as I recall, giving them certain instructions and certain information.

She wrote back and asked the question, why didn't you give us this information to begin with. Commissioner Scanlon, would you like to comment on that? I was quite moved by that testimony because it seemed to me that the industry was not telling the whole story and if the——

Mr. **Scanlon**. Four years ago, the industry was not telling the full story. I concur with that witness wholeheartedly. Today, it will be different with these Consent Decrees that were signed on Monday. There is an extensive notice provision in both Consent Decrees.

Mr. **Nielson**. Let me ask this question. Has anyone quantified these deaths as to what was the cause of the accident, abuse of the machine, showing off, riding the machine too big for the individual or just instability in the basic inherent instability that could not have been helped.

Has anyone quantified these numbers?

Mr. **Scanlon**. The Commission has, Mr. Nielson. We found in deaths, 30 percent were attributed to alcohol use; 45 percent of the deaths occurred on public roads and, as you know, ATV's are not designed for pavements or public roads; and, 25 percent occurred on paved roads. Obviously, there is a combination of these, where there might be alcohol use and the driver riding on a public road.

That will indicate or that does indicate, that there is a high number of consumer—there is a high number of consumer misuse with this product.

Mr. **Nielson**. Do you have any quantification of how many of the deaths are three-wheeled versus four-wheel?

Mr. **Scanlon**. I will provide it for the record.

Mr. **Nielson**. As I have related to this subcommittee before, we had a State Legislator from my State who was killed on an ATV just a year ago. This man was a farmer and he used the ATV to go out and move the sprinkling system.

He was killed, even though he was very experienced, over terrain with which he was very familiar. His widow, who took his place as State Representative is dubious about this bill.

My information is that she says that Merrill was the kind of man that would not have even considered a refund. I got the impression that the father mentioned today was the outdoor type of man who would also probably not have done that.

To what extent do you think this refund would be used if offered? Just a pure guess, any Commissioner.

Ms. **Graham**. Congressman, I can't speculate on that, but my concern is that many children are involved in these deaths. Their parents were not aware of the problems at the time that the ATV was purchased. So I think it is very important that there is some method for parents who have been misled to return the adult-sized four-wheel ATV's that they may have purchased for their children.

Unlike Chairman Scanlon, I do believe there is a defect of all three-wheelers and there should be a refund.

Mr. **Nielson**. What about four-wheelers?

Ms. **Graham**. For those who have been purchased——

Mr. **Nielson**. I yield to my colleague Mr. Barton.

Mr. **Barton**. The numbers that I have seen and the statistics that I have seen indicate that they estimate between one-third to one-half of the three-wheelers in existence today would respond to a refund. So that would be somewhere between perhaps 500,00—you can go as low as 300,000—up to 750,000.

Mr. **Scanlon**. Mr. Barton——

Mr. **DeFiore**. That is not the data that we have, Mr. Barton. If we could respectfully disagree.

Mr. **Barton**. I'm not saying that—that is just the numbers that I have seen, OK? There are a lot of numbers floating around.

Mr. **DeFiore**. We can provide detailed information for the record. The memorandum that the staff did for illustrative purposes, we took a 30 percent—we hypothesized the 30 percent return on refunds and used that to crank out numbers.

In looking at the survey we have done of present owners of ATV's it appears that very few of them are interested in getting refunds for their vehicles, even for a fair market value. Many of them answered no to that question. We can provide that information.

Mr. **Nielson**. I will continue to yield.

Mr. **Barton**. If I could—I appreciate your yielding. It is almost immaterial in a sense. As long as it is a voluntary refund and it is not a recall, we are not forcing people to turn their vehicles in. The

Consent Decree is going to require that there be an informed public.

If there is an informed public and we have a refund provision that is voluntary, if 10 percent turn them in so much the better. Hopefully, in my opinion, 90 percent would turn them in. To get into a debate on whether the numbers I have seen are the right numbers or the wrong numbers, I was just trying to answer.

We are in the general ballpark, the same order of magnitude. That is——

Mr. **DeFiore**. Mr. Barton, if I could just comment on that. The administrative burden for this Agency to administer that refund we have estimated would cost us about $2.5 million in 1989 to administer the refund provision of the bill, or up to $2.5 million and possibly we can do it for less.

What one has to weigh is how much safety will we get for $2.5 million in ATV work versus the activities which we will have to forego in order to do that. For example, if we were to do some work in the bicycle area, if we were to reduce injuries there by 1 percent, that would eliminate 8,000 injuries.

When we turn our attention to administering this bill if it is passed, with the refund provision, we will be shutting down a number of activities which we are now planning to do which are safety related. The Congress could give us a supplemental, but we have not gotten encouraging words from our appropriations committees.

Mr. **Nielson**. I have one more question, Mr. Chairman. I would like to ask Commissioner Dawson who seems to be the swing person in this area. Commissioner Dawson, do you think this H.R. 3991 is necessary or do you think that we should wait until we see the effect of the Consent Decree for a period of time?

Ms. **Dawson**. Hopefully, the Consent Decree will go into effect as soon as the judge approves it, which would be quite soon. I don't know how long this legislation might take.

Mr. **Nielson**. Should there be time to see how this ban on further sales and increased instruction work?

Ms. **Dawson**. I think that to the extent that——

Mr. **Nielson**. As a policy.

Ms. **Dawson**. To the extent that there are some identical measures in H.R. 3991, they may not be necessary by the time they go through the legislative process.

Mr. **Nielson**. I get the impression that's not a very fast track.

Ms. **Dawson**. Well, that's not good.

Mr. **Scanlon**. We hope.

Mr. **Nielson**. With the high number of H.R. 3991, we are still looking at H.R. 1132 numbers and things like that in some of our other committees.

Mrs. Graham, I am a little disturbed about what this counsel just said. He said it may cost $2.5 million. How do you possibly evaluate $2.5 million versus the lives that could be saved if this could be prevented. That seems like a very cheap price if you can save as many as Mr. Barton says we can.

Ms. **Graham**. I couldn't agree with you more. We have been looking at this problem for several years. There have been over 990 deaths and over 330,000 reported injuries. I think we need to take a measure to stop this.

Mr. **Nielson**. I have some other questions that I would like to submit for the record. I understand that our time is gone, and I appreciate your being here. Commissioner Scanlon, would you like to comment on that?

Mr. **Scanlon**. I was going to give you the figure, Mr. Nielson for deaths on four-wheelers in 1987. It was 45 percent of a total of 172.

Mr. **Nielson**. Let me ask one last question. My staff member just told me that I should ask this question so I will. We have all this power, but we still depend on our staff occasionally.

What about State licensing or maybe a driver's license or something of that nature? Would that cut down the number who intend to keep their ATV's?

Mr. **Scanlon**. Indeed. And this is something that has been encouraged by the Commission since 1985. We wrote our first letter to all 50 Governors of the 50 States in January, 1987, requesting that State legislation be enacted to include among other things, just that.

Mr. **Nielson**. Thank you, Mr. Chairman.

Mr. **Florio**. Let me just make a couple of observations. Every once in a while, when we go through these hearings, we hear a seductively phrased cost benefit analysis and things of that sort that start to glaze things over. Fortunately enough, periodically someone will say something dumb, like Mr. DeFiore did before, to heighten the awareness of the problem that we have here.

We have an Agency that gives us all the excuses as to why we can't be doing things to provide for safe products. The whole thing about how we should not move in this direction because we have $2.5 million worth of administrative costs to implement the refund, first of all, I don't know where you would get a number such as that if you require that there be a refund. You don't have to set up an administrative bureaucratic system to do that. You put out the notice, the people go to get the refund. If they don't get it, they complain.

You send a notice out stating what the law is. What is even more significant, is this feeling, this need that the Agency apparently has, to tell us why they can't do all the things that run counter to common sense. The common sense component is that if you are going to provide opportunities for people to get the imminently hazardous machines off the road that are out there and you, the Commission, determined that they were imminently hazardous at least by a vote of 2 to 1, you are going to reduce the danger.

And then I hear people tell me about how it is mostly other people's problems out there. They have misused these vehicles. We have got to appreciate the subtly of the distinction of danger. You talk about bicycles versus three-wheelers, that is almost intellectually insulting to be talking about the comparison of bicycles with three-wheelers.

If somebody said we were going to market flame throwers as toys and that they are going to kill 20 people a month, it would not be something that would be easily understood. You will use them dangerously, we bought them and the kids didn't know how to go about using them. People are drinking and using their flame thrower. Obviously, that is an extreme example, but it is a matter of degree. It is not that different from what it is that you are talking about.

I am troubled when I hear things about how we can't do this thing because it's going to cost us $2.5 million. You want to go talk to the people in the room who have lost children and parents and try saying that the administrative cost is too terribly much, that is not something that I am not comfortable with. You may be more comfortable than I am with that type of analysis.

Mr. DEFIORE. Mr. Florio, if I can clarify what my point was—the Agency has a finite amount of resources. If we are required by the Congress to spend them in this way, there will be a trade off in terms of safety in terms of what we will not be able to do.

Mr. FLORIO. This was the Commission's recommendation. The Commission recommended that we have the ability to get a refund. I assume the Commission analyzed the desirability of it in the first place when the recommendation was made. Over and above that, I am at a loss.

I will yield to any of the other members if they can tell me where they think there is going to be this $2.5 million administrative cost if you require the company to give back money to individuals who want to go out and get the refunds for these things.

You have analyzed that there is not a big demand. You have worked from a premise that you are not going to find a lot of people wanting to turn them in. Let's assume that you are correct. Therefore, you haven't got a lot of burden.

On the other hand, if people do want to turn them in, I can't conceive of a need for a great bureaucratic structure. You announce it, people go, if they don't get satisfaction they complain to you, you make a phone call. I am at a loss, and quite frankly the thing that concerns me the most is that it demonstrates a mind set. It demonstrates a mind set even to run counter to what the Commission has advocated.

The gentleman from Ohio.

Mr. ECKART. Thank you, Mr. Chairman. My concern is the Chairman's testimony that there was a conspicuous lack of rider training as the example of the industry's lack of effective action.

Focusing on the theme of Chairman Florio, how will the CPSC have the resources to monitor the effectiveness of the industry's promised training regimen?

Mr. SCANLON. It is laid out specifically, Congressman, in the Consent Decree. We will be happy to provide you a copy of that. I can briefly summarize that if you desire.

Mr. ECKART. How many training centers will there be around the country, I would just like to know that.

Mr. SCANLON. 350.

Mr. ECKART. How many CPSC inspectors, for instance, will there be in the field to monitor the activities of these training centers?

Mr. SCANLON. We have a total of about 80 inspectors around the country.

Mr. ECKART. To specifically deal with the training regimen for the ATV's?

Mr. DEFIORE. We have 80 investigators for all of the work that CPSC does.

Mr. SCANLON. The industry has to provide, under the Consent Decree, very detailed reports to the Commission.

Mr. ECKART. The training centers do?

Mr. SCANLON. Yes, through its national headquarters, SVIA.

Mr. ECKART. If you have 80 CPSC investigators and 350 new training centers, how are we going to know that the training centers are doing what they advertised to do is what my question is.

Mr. SCANLON. Let me elaborate on one thing. The 350 in the Consent Decree are called area administrators. There will be actually more trainers than the 350. I should clarify that.

Mr. ECKART. How are we going to know that they are doing what they are supposed to be doing, is my question?

Mr. SCANLON. Could I defer to Mr. Lacy, who attended all the negotiation sessions on this.

Mr. ECKART. Please.

Mr. LACY. Thank you, Mr. Eckart. Under the preliminary Consent Decree, you will see that for a term of 10 years, the industry will be required to maintain a national headquarters with nine professional staff members and support staff. That national headquarters will be responsible for developing, maintaining and promoting the use of this training program.

Second, to be sure that we have this industry involved in developing the training program at the grass roots for 10 years, the industry will be required to have six regional offices with six regional administrators with support staff.

Beneath that second layer of administration will be 350 area administrators and we hope 350 locations supplemented by approximately 1,000 individuals who will provide the training.

Under the terms of the Consent Decree as the chairman has said, there are regular reporting requirements on the part of the SVIA, to keep us informed of the development of their—and implementation of the training. There is also a requirement, absent the—otherwise absent the provision of State laws which are absolutely the best incentive for having consumers take the training, the Commission has provided in this Consent Decree with the Justice Department and the industry for a cash incentive for consumers to take the training.

That cash incentive constitutes, at the consumers option, either a $100 savings bond, $50 in cash, or a merchandise certificate.

I note from reading the Ohio newspapers Congressman, that you provide an incentive for constituents to provide you advice on legislation, that you actually give a $50 savings bond to individuals who provide you advice and ideas in the context of legislation.

Perhaps we haven't directly picked up on that idea, but we have provided for twice the incentive for individuals to take this training. We are working and hopeful that State legislators will respond to the mandatory training.

It is incumbent upon the Commission to develop an implementation program and we are going to be effectively doing that. We are going to be sending members of the litigation team, proposing to the Commission that members of the team go out into the field to educate our compliance officers in the terms of the Consent Decree. We anticipate within the CPSC headquarters at Bethesda that we will, in fact, be involved in oversight.

There will be some resources that will be needed. I think that the Chairman yesterday said that in addition to regular staff work, we have budgeted an additional $100,000 to be committed to that enforcement effort. I would defer to the chairman and the executive director to further respond.

Mr. **Scanlon**. That is correct.

Mr. **Eckart**. That is my concern. Our chairman of the full committee has an interesting saying. He says that I trust everyone, but I always cut the cards. How do we know that while we trust the industry to do all of these things, that we are going to be cutting the cards to make sure that they are doing what the Consent Decree promises?

Mr. **Scanlon**. We also have the enforcement power of a Federal judge, who will be overseeing this Consent Decree.

Mr. **Eckart**. For you to oversee the decree, somebody has to be checking on the checkers.

Mr. **Scanlon**. We do. I mentioned earlier that we have 80 enforcement officers around the country. In addition to that we have what we call State designees in each of the States. They have helped us to date.

I am delighted that, since the preliminary Consent Decree was signed December 30 of last year, some 434 dealers had been monitored just by our State contacts. There are a total, Mr. Eckart, of 5,000 dealers.

In addition to that, there were several dealers monitored by our own staff.

Mr. **Eckart**. The resources of the Agency have to be severely stretched as it is, to now pick up monitoring 350 area administrators. Do you anticipate requesting additional funds for this in your budget authorization?

Mr. **Scanlon**. At a later date, we may have to. At this time, we are not.

Mr. **Eckart**. Because it has not been implemented yet?

Mr. **Scanlon**. The settlement has not been signed by the judge. If that happens, it will be April 18.

Mr. **Florio**. Would the gentleman yield?

Mr. **Eckart**. Yes, sir.

Mr. **Florio**. In the broader context of our authorization bill, do you have any interest in getting authority for a user fee concept for the implementation of settlement agreements and other agreements, such that those who are going to be benefiting from the settlement, whether they think of themselves as benefiting or not, would pay the enforcement costs for such settlements?

Mr. **Scanlon**. I am sure we would consider it, Mr. Chairman.

Mr. **Florio**. Thank you.

Mr. **Eckart**. I have concerns about the potential problems of manufacturers in ensuring that the dealers follow the guidelines. Several manufacturers spoke to me about this problem—and I realize that they don't control all of their 5,000 dealers.

In a recent hearing a Yamaha dealer made the following statement: "You can't tell me that I have to put on all this gear"—referring to the helmet and protective clothing—"to be safe."

When the industry's own dealers publicly criticize the safety warnings and standards, how can we have any confidence that the industry itself is sincere about getting the right message about safety out to the consumers?

Mr. **Lacy**. In response to the question—the Chairman has asked me to respond, Mr. Eckart. The defendant's in this case are clearly the manufacturers, they are not the dealers. If the dealers in this case had been the defendant's we would have had to file suit in 94 different jurisdictions, I believe, around the country.

We would have had quite an administrative nightmare. The fact of the matter is that being the Consumer Product Safety Commission, the manufacturers of the product and their distributors in the United States are, we feel in consultation with the Justice Department, the appropriate defendants in this case.

Mr. **Eckart**. I am not assuming that they are the inappropriate defendants. I am trying to figure out how you think the manufacturers are going to be able to have leverage over their dealers.

Mr. **Lacy**. The provisions that we have in this Consent Decree provide, for example, in the case of the stop sale of the three-wheel ATV's and other provisions that the manufacturers will engage in best efforts specifically for in the Consent Decree, will engage in best efforts activity with respect to their dealers to obtain compliance.

Our view of this, Mr. Eckart, is that if a dealer were acting in bad faith with the knowledge of the defendants, and with no affirmative action on the part of the defendants to correct the situation with the dealer, we would go into U. S. District Court and seek a contempt citation to compel that manufacturer to take steps.

Mr. **Eckart**. The question I have, and you reference the three-wheel stop-sale, is that a spokesman for Honda, Curt Antonia, said his firm will store the 18,000 three-wheel models currently in dealer inventories in hopes of returning them to the market within several months.

Another spokesman for Yamaha views the court decree simply as a moratorium and said that his firm hopes to have the three-wheel models back on sale after minor modifications, he says.

How do you view the manufacturers assertions, given your statements about the three-wheel sale being the tool that would force them to—or be a tool to deal with their compliance.

Mr. **Lacy**. Let me make just one comment and then Mr. DeFiore will answer. If you are reading from the same Washington Post article that I read, I think it was January 4, you will also see a comment from CPSC that it is highly unlikely under the terms of the preliminary Consent Decree—we were operating under the preliminary Consent Decree at that time—that those three-wheelers would ever get back on to the market.

We have stopped the sale of new three-wheelers. We have imposed upon this industry a repurchase program that they must offer to dealers to take back new three-wheelers in the dealer inventories.

It is unfortunate that a comment like that would be made. It was not helpful in the context of our negotiations. My own feeling without prejudging the future issue that technology might allow a perfectly safe three-wheel ATV 10, 20, or 30 years from now, whether it would or wouldn't the situation right now is such that it is highly unlikely under current technology that a safe three-wheeler that would meet performance standards that the Commission might require under the performance standards that are in Congressman Barton's bill that have been provided to him by the CPSC would allow.

Mr. **Barton**. Would the gentleman yield for just a second?

Mr. **Eckart**. Let me just follow up, and I will then. Mr. Chairman, do you foresee any circumstances in which these three-wheelers currently in storage in the immediate or foreseeable future could be sold?

Mr. **Scanlon**. No, I do not.

Mr. **Eckart**. Ms. Dawson, do you agree with that?

Ms. **Graham**. I think we need the protection of the Barton bill to make sure that they are never back on the market.

Mr. **Eckart**. I assume you agree that it is highly unlikely?

Ms. **Dawson**. It is highly unlikely.

Mr. **DeFiore**. Mr. Eckart, I would just add that we can envision no safety standard which the currently marketed three-wheelers could meet, whether we got it voluntarily, under CPSC rules or under this legislation. We don't foresee any safety standard that would allow the return of the currently marketed three-wheel vehicles.

Mr. **Eckart**. I would be happy to yield to my friend, Mr. Barton.

Mr. **Barton**. I thank you. I just might point out that one of the motivating factors that influenced me to go ahead and introduce the legislation were those unfortunate comments. That certainly telegraphed to me a mind set that in spite of the good intentions of the Consent Decree and the best efforts of the Commission, unless there was a legislative ban there was every indication that the manufacturers of this equipment at the appropriate time when they thought the dust had settled and the anguish and cries of the mothers had died down, these things would show back up on the market.

I think a rational, logical individual would have to agree at least partially with the assessment that I made.

I yield back to the gentleman from Ohio.

Mr. **Scanlon**. Mr. Barton, I believe everybody at the Commission would agree with your statement.

Mr. **Barton**. Thank you.

Mr. **Eckart**. I have no further questions, Mr. Chairman.

Mr. **Florio**. Let me just ask one or two procedural questions. It is my understanding that at some point in the course of the negotiations and the various meetings, industry representatives suggested language which would make the Consent Decree null and void if the Congress passed legislation comparable to the type that we are talking about.

It is my understanding that there is some documentation that the Commission has representing that fact. I ask if that is the case, and we would like to receive that documentation. Mr. Lacy.

Mr. **Lacy**. There is documentation at the Commission. Of course, our negotiations were conducted under confidential circumstances and there was information that we exchanged on the broad range of issues under confidential circumstances.

So, with the committee's indulgence under restricted cover, we would certainly provide that to the committee.

Mr. Florio. We will look at what you will provide us and then reserve our rights to make further inquiries.

[The documentation referred to follows:]

Def. Proposal
March 4, 1988

Effect of Federal Legislation

The parties recognize that legislation may be enacted by the United States Congress that will impose on defendants, either directly or through rule-making by the Consumer Product Safety Commission, requirements and obligations relating to ATVs other than, or in addition to, those undertaken by defendants in the Preliminary Consent Decree and this final consent decree. If any such legislation is enacted into law within _______ years of the effective date of this final consent decree, the defendants shall be relieved of any requirements of this final consent decree that impose obligations to be performed after the date of enactment.

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March 11, 1988

BY HAND

Mr. Stephen E. Hart
Assistant Director of Federal
Programs Branch
Civil Division
Department of Justice
Tenth and Constitution Avenue
Washington, D.C. 20530

Re: United States of America v. American Honda Motor Co., Inc., et al., Civil Action No. 87-3525

Dear Steve:

As indicated in our meeting this morning, we are enclosing for consideration a draft additional paragraph to be added to the present draft of the Reservation of Rights section of the final decree.

This submission is made on behalf of all defendants.

Howard Willens will be in touch with you about this later today.

Sincerely,

Lloyd N Cutler
Lloyd N. Cutler

Enclosure

3/11/88

Proposed Addition to Reservation of Rights Section

In the event that the Commission takes action to impose or enforce obligations on the defendants relating to ATVs that are not within the reservation of rights set forth in this paragraph, any defendant may apply to the Court to be relieved of any further obligations imposed by this decree that were consented to by such defendant or defendants in reliance on the limitations set forth in such reservation of rights. Such application shall be in addition to any other remedy available to such defendant to challenge any such Commission action.

Mr. **Florio**. The gentleman from Texas.

Mr. **Barton**. I just have one other question or comment based on the dialogue in the last few minutes. I have made a pretty good faith effort to meet with all of the members of the Commission and the staff—I think I have met with everyone at the table—in trying to get educated on this issue.

When we talk about the cost of the refund, the $2.5 million cost which is bound to be some worse case internal scenario proposal, I would like to point out that in addition to what Chairman Florio just said, the indication that I get is that you all have been encouraged at every step of the way not to communicate with the Congress, not to work with the Congress, not to inform us.

I understand with the separation of powers that there's got to be a little standoff position, but just as an example, I am told that on December 16 the Deputy Assistant Attorney General, Mr. Synkar, urged the Commission to specifically keep the Congress in the dark about the ATV's negotiations.

We are reasonable people up here. If you folks will provide us with the information and work with us, I think we will work with you. I think if you need a little bit more money, even under Gramm-Rudman, I think we could come up with $2 or $3 million. If you stonewall us and intentionally mislead us, we are going to do what we think is right based on the information we have.

Mr. **Marchica**. Mr. Barton, if I could respond. As the Chairman of the ATV Task Force from April 3, 1985, until the time when major responsibilities were given to legal staff December 12, 1986, every request by Congress which was made——

Mr. **Barton**. You have been very forthcoming with me.

Mr. **Marchica**. The information was provided. There may be other circumstances, because of the problems involved with litigation, but certainly during the time when I was running the ship you got everything that you asked for.

Mr. **Scanlon**. That is the case with every Member of Congress that I am familiar with. I have had no complaints from any member that anything requested has not been received.

Mr. **Barton**. What about the Deputy Assistant Attorney General's request to keep us in the dark?

Mr. **Lacy**. Could I respond. First of all, we do have, I believe, minutes of that meeting which was a closed meeting that have a reference to the comment. So we would be certainly—if we haven't provided it to you, we would certainly want to provide that to you.

Mr. **Barton**. I think the chairman would be interested. I would be interested.

Mr. **Lacy**. Can I finish? In defense of my colleague Mr. Synkar at the Justice Department, he didn't say quite that. He didn't say quite to keep the Congress in the dark. However, I must point out that——

Mr. **Barton**. What did he say?

Mr. **Lacy**. It is in the restricted—it was a closed meeting and it is there. We will provide it to the committee for your view.

Mr. **Barton**. Clean it up and tell me.

Mr. **Lacy**. I do want to point out in a substantive sense that the comment was made at about 2 p.m. and the Deputy Attorney General, Arnold Burns received a call from Senator D'Amato's office within an hour and one-half that discussed everything that went on at that meeting.

So I don't think that it can be said fairly that the Congress was kept in the dark. Congressman Barnard's office called me at 4:30 p.m. with a series of questions on the same subject.

Mr. BARTON. My point is, if I didn't say it at the beginning of this hearing I've said it before on public record, that this is a kind of multi-pronged approach. The Consumer Product Safety Commission, concerned citizens, the Justice Department and the U.S. Congress working together, can solve this problem.

If we decide that we are going to just fight each other for whatever reason, it is just going to delay a reasonable solution to the problem. That is the main point that I would like to make.

I am told that we now have the minutes of that meeting. How we got them, I don't know.

Mr. LACY. You must have requested them.

Mr. BARTON. With the chairman's discretion, I will read them into the record right now——

Mr. FLORIO. That would be fine. I would note and I am sure that the gentleman will note, that this is not a transcript. These are minutes of somebody's notes as to what it is that took place. Please proceed.

Mr. BARTON. This is dated minutes of closed Commission meeting, December 16, 1987, 5401 Westbury Avenue, Bethesda, Maryland. Commissioners present: The Chairman, Mr. Scanlon; The Commissioner Carol Dawson, the Commissioner Anne Graham.

I am reading from page five of the record. It says as a final matter, Mr. Synkar recommended that the December 30 press conference and other details of the negotiation be kept as secret as possible in order not to jeopardize the proposed action. Chairman Scanlon asked if that recommendation includes CPSC's, Congressional committees, to which Mr. Synkar responded—yes. The Commissioners then agreed that they would not talk about this matter with anyone, including the Congress.

Commissioner Graham noted that if a specific request for information is received, she would want to be responsive—we appreciate that—she would want to be responsive to Congress and would refer the request to the general counsel.

For the Commission, Sadie E. Dunn, Secretary.

Do you all disagree with this as accurately portraying what went on?

Mr. LACY. Of course.

Mr. BARTON. OK. I yield back to the chairman.

Mr. FLORIO. If there are no further questions of this panel, we appreciate your participation once again. Thank you very much for your time.

The committee's intention is to take our next witness. We intended to take a panel but the Attorney General of Tennessee has a travel commitment. We are going to take Attorney General Cody, listen to his testimony and excuse him as rapidly as we can after we ask the appropriate questions.

At that point we will take a recess and reconvene for our last two panels. We are now pleased to have the Honorable W.J. Michael Cody, the Attorney General of the State of Tennessee. Mr.

Attorney General, we welcome you to our committee. Your prepared statement will be put into the record in its entirety. You may feel free to proceed in a summary fashion.

STATEMENT OF W.J. MICHAEL CODY, ATTORNEY GENERAL OF TENNESSEE

Mr. Cody. Thank you, Mr. Chairman. I appreciate the committee's concern about my schedule. I may be on the edge, and I don't want to in any way short change this. My associate has got word to cancel that flight and get me on another one. If the committee needs me, this is too important for the State for me to worry about a plane. I do appreciate your consideration.

We would like to thank all of the members of the committee for providing us this opportunity to address what the States believe to be a very serious consumer safety problem posed by the all terrain vehicles, and to talk about the bill introduced by Congressman Barton which seeks to alleviate that problem.

I would ask that the record reflect the balance of my comments, which go into some detail, and I will touch the high points. Also, I would like to submit into the record, a unanimous resolution of every Attorney General in the United States addressing the ATV problem, pointing out our concerns about the inadequacy of the consent settlement that has been recommended to the court and our support generally of legislation of this nature.

Again, I repeat that is a unanimous expression of every Attorney General in the United States, as the Chief Law Officer and as the Consumer Advocate in our various States.

Particulary in Tennessee as of September 4, 1987, 27 people have died as a result of ATV accidents. Another child was added to the death toll in Tennessee as recently as February 29 of this year, when his ATV simply overturned when he was going up an incline on to him crushing him. That young boy was only 13-years-old.

Experts who have studied the causes of ATV accidents have pointed out several problems. The design of the vehicle is such that its successful operation requires skill that is neither instinctive nor easily mastered. The most experienced, skillful rider may still be injured on the vehicle. Of course, as you have heard, the risk of injury is particularly serious for children under the age of 16.

They lack the physical and judgmental abilities to operate these machines safely. Furthermore, children under the age of 12, we believe, cannot even operate the child sized ATV's safely. The risk of death or serious injury associated with these machines is compounded by the fact that the manufacturers have consistently in the past, marketed these vehicles as being safe, fun and easy to ride.

The Consumer Product Safety Commission, of course, has the primary responsibility to protect all U. S. citizens from dangerous and hazardous products. In our opinion, as unanimously expressed by all of the Attorney's General of this country, the CPSC has not adequately met its obligation in the case of the ATV's.

In its lawsuit against the manufacturers, the CPSC and the Justice Department acknowledge in very strong language, that ATV's are imminently and unreasonably hazardous. Nevertheless, we believe that Consent Decree fails to adequately alleviate the hazard that we face.

We believe that eliminating the three-wheeled ATV's is essential. Current three-wheeled ATV's have design defects which render them unreasonably hazardous. As we indicated, the safety problems are compounded by the fact that they have been promoted as stable and solid and easy to operate.

We believe that the CPSC should be required to promulgate performance and design standards that will be effective in reducing the serious risk of death and injury associated with the design of these machines. The Federal settlement simply contemplates that the industry and the CPSC will agree on a voluntary standard. The settlement does not specifically declare that a mandatory standard will be promulgated if the parties fail to reach an agreement on voluntary standards.

Further, even if the parties do agree on a standard, the decree refers only to standards and not to standards respecting performance requirements. Based on what we think to be the Safety Act definition of standard, it would be possible under the present situation for these machines to be marked or labeled or contain instructions which might meet certain of their standards and yet not be true performance standards.

We believe that the legislation which has been proposed by Congressman Barton will help to ensure that the standards that are reached will be, in fact, performance requirement standards. We think that despite the hazard presented by ATV's, there is in the settlement a no consumer refund provision. We support the provisions of this legislation requiring the manufacturers to offer refunds to consumers who have purchased three-wheeled ATV's.

Consumers who have already purchased an ATV had no notice or inadequate notice of the risk of death and severe injury posed by ATV's. The manufacturers have affirmatively misrepresented the characteristics of the machines. The advertisements which we have seen have shown maneuvers of ATV's such as jumps, riding at high speeds, and riding on rough terrain. The ATV's have been marketed consciously as recreational vehicles for young children.

The manufacturers have profited by their unfair and we think deceptive advertising, and in marketing these machines in that way we believe should be required those profits to the mislead consumers who wish to take advantage of that refund. We believe that these refunds would be an incentive of removing the ATV's from use.

If legislation is not enacted, we believe that there will be a significant private sale market created around the country, and even in these private sales you will not be exposed to the point of sale warnings and opportunity to participate in the driver training programs that are part of the settlement.

Experts have concluded, of course, that increased levels of experience will decrease the accidents. The risk of a serious injury is also reduced through compliance with certain operational requirements such as use of a helmet and the prohibition against carrying a passenger. I will be testifying next week and meeting tomorrow in my State, with legislative leaders to try and fill in the blanks where the States need to be active in these kinds of safety standards that States can do.

We will pattern our training programs and utilize whatever is going on at the Federal level. Although we are encouraging State ATV's safety legislation, those of us in positions of responsibility in our respective States, the staggering number of deaths and injuries associated with the operation of these machines, we believe demonstrate that it is a national problem meriting immediate Federal action.

In conclusion, I would strongly urge this subcommittee to fill in the gaps left by the CPSC and industry settlement, and enact comprehensive ATV safety legislation containing the provisions that we have discussed.

I appreciate very much the attention of this committee to the concerns of the States.

[The prepared statement and attachment of Mr. Cody follows:]

TESTIMONY OF TENNESSEE ATTORNEY GENERAL

W. J. MICHAEL CODY

Chairman Florio and members of the Subcommittee, I would like to thank you for providing me with this opportunity to address the serious consumer safety problem posed by all-terrain vehicles, and the bill introduced by Congressman Barton which seeks to alleviate that problem.

Before I discuss the specific provisions of the proposed legislation, I would like to briefly illustrate the necessity for an immediate solution to the ATV problem. Since 1982, all-terrain vehicles have been associated with over 1,000 deaths and more than 330,000 injuries sufficiently serious to require hospital emergency room treatment. About half of those killed or injured on ATVs since 1982 have been children under age 16. Nationally, deaths have been reported at a rate of 20 per month; injuries at a rate of 7,000 per month. The cost to society of these deaths and injuries has been estimated at over 1.5 billion dollars.

In Tennessee, as of September 4, 1987, 27 people had died as a result of ATV accidents. Another child was added to the death toll in Tennessee as recently as February 29, when his four-wheeled ATV overturned and landed on him. The boy was 13 years old.

Experts who have studied the causes of ATV accidents have pointed out several problems. The design of the vehicle is such that its successful operation requires skill that is neither instinctive nor easily mastered. The most experienced, skillful rider may still be injured on the vehicle.

The risk of injury is particularly serious for children under 16 years of age. Children under 16 lack the physical and judgmental abilities to operate an ATV safely. Furthermore, children under 12 years of age cannot operate even a child-sized ATV safely. The risk of death or severe injury associated with operation of ATVs is compounded by the fact that the manufacturers have marketed the vehicles as being safe, fun and easy to ride.

The Consumer Product Safety Commission (CPSC) has primary responsibility to protect all U. S. citizens from dangerous and hazardous products. In my opinion, and in the opinion of the majority of the other attorneys general, the CPSC has failed to meet its obligation in the case of ATVs. In its lawsuit against ATV manufacturers, the CPSC acknowledges that ATVs are imminently and unreasonably hazardous. Nevertheless, the Preliminary Consent Decree filed by the CPSC fails to adequately alleviate that hazard.

As chief legal officers of the states, the attorneys general have the responsibility for enforcing state consumer protection laws. Accordingly, several attorneys general became interested in the ATV problem early on. Late last year the

National Association of Attorneys General (NAAG) formed a Task Force to further study the ATV problem. I was appointed chair of that Task Force.

Following consultations with experts and an in-depth analysis of the federal settlement, on January 25, 1988, the NAAG ATV Task Force issued its report. The report discussed the dangers posed by ATVs, the inadequacies of the federal preliminary consent decree in eliminating these dangers, and made recommendations for further action by federal and state governments. The Task Force suggested that the CPSC decline to sign a final consent decree that does not require the following:

- an immediate ban on three-wheeled ATVs;
- an immediate ban on the sale of child-sized ATVs and the sale of adult-sized ATVs for use by children under 16;
- development of a mandatory consumer product safety standard consisting of performance requirements to address the design problems associated with ATVs;
- specific changes in the marketing and promotional programs described in the preliminary consent decree;
- specific changes in the warnings and notices at the point-of-sale described in the decree;
- inclusion of a stipulation in the safety verification form that a customer's signature on the form does not constitute waiver of the manufacturer's liability;
- refunds to consumers who wish to return their ATV, having learned of the risk of death and injury posed by its operation;

- free training offered by the industry for all ATV operators.

The NAAG Task Force also suggested that the states support federal legislation that would assist in the achievement of the recommendations contained in the report.

The proposed legislation before this Subcommittee addresses the main concerns of the Task Force Report: banning three-wheeled ATVs, promulgation of design standards, driver training, and refunds to past purchasers.

We believe the banning of three-wheeled ATVs is essential. Current three-wheeled ATVs have design defects which render them imminently and unreasonably hazardous consumer products. The safety problems are compounded by the fact that three-wheeled ATVs have been promoted as solid, stable and easy-to-operate vehicles.

We believe that the CPSC should be required to promulgate performance and design standards that will be effective in reducing the serious risk of death or injury posed by the design of four-wheeled ATVs. The federal settlement simply contemplates that the CPSC and the industry will agree on a voluntary standard. The settlement does not specifically declare that a mandatory standard will be promulgated by the

CPSC if the parties fail to reach an agreement on a voluntary standard. Furthermore, even if the parties do agree on a standard, the decree refers only to "standards" and not to "standards respecting performance requirements." Based on the CPSC's Safety Act's definition of standard, the requirement of this provision could be satisfied if the CPSC adopts a safety standard which requires ATVs to be marked with or accompanied by certain warnings or instructions, but does not include performance requirements. The inadequacies of the settlement in the area of design standards underscore the need for the proposed legislation.

Despite the hazards presented by ATVs, there is no consumer refund provision in the federal settlement. We support the provisions of the proposed legislation requiring that manufacturers offer refunds to consumers who have purchased three wheeled ATVs.

Consumers who have already purchased an ATV had no notice or inadequate notice of the risk of death and severe injury posed by ATVs. Manufacturers have affirmatively misrepresented the characteristics of ATVs. Advertisements show maneuvers of ATVs, such as jumps and riding at high speeds on rough terrains. ATVs have also been marketed as recreational vehicles for young children. Manufacturers have profited by their unfair and deceptive practices in marketing ATVs and should be required to refund those profits to the misled consumer. Furthermore, consumer refunds are an incentive to remove ATVs from use.

If no legislation is enacted providing for consumer refunds, current ATV owners will be forced to dispose of their ATVs through private sales. An increase in private sales will likely result in an increase in the number of deaths and injuries associated with ATV use in that a private sale buyer will not be exposed to point-of-sale warnings nor the opportunity to participate in the manufacturers' driver training program.

Experts have concluded that the probability of an ATV accident decreases as the level of experience of the operator increases. The risk of serious injury is also reduced through compliance with certain operational requirements, such as the use of a proper helmet, and the prohibition on the carrying of passengers. Accordingly, we support the provisions of the proposed legislation requiring that the manufacturers offer free training, as well as helmets and other protective equipment to ATV purchasers.

Finally, we believe that all consumers must be adequately warned of the serious risk of death and injury associated with ATV use, and therefore, support the provisions of the proposed legislation requiring the manufacturers to provide notice of the risk of injury or death through warning stickers and other means.

Although many state attorneys general are encouraging enactment of state ATV safety legislation, the staggering number of deaths and injuries associated with operation of an ATV demonstrates that it is a national problem meriting immediate federal action. Accordingly, I strongly urge the Subcommittee to fill the gaps left by the CPSC/industry settlement, and enact comprehensive ATV safety legislation containing the provisions I have discussed today.

Submitted by Attorney General W. J. Michael Cody, Tennessee

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Spring Meeting
March 13-15, 1988
Washington, D.C.

I

RESOLUTION

ADOPTING THE NAAG ATV TASK FORCE REPORT

WHEREAS, since 1982, all terrain vehicles (ATVs) have been associated with over 900 deaths and more than 330,000 injuries sufficiently serious to require hospital emergency room treatment; and

WHEREAS, nearly half of those recorded deaths and injuries have involved children under the age of 16, and in some cases as young as age 5; and

WHEREAS, in economic terms alone, the annual cost of the deaths and injuries associated with ATV use is approximately $1.5 billion; and

WHEREAS, the Consumer Product Safety Commission (CPSC) on February 12, 1987 requested that the U.S. Department of Justice (DOJ) bring an enforcement action against ATV manufacturers for alleged violations of §12 of the Consumer Product Safety Act; and

WHEREAS, on December 30, 1987, the CPSC as represented by the DOJ simultaneously filed a complaint and a consent decree in settlement of the ATV safety issue; and

WHEREAS, the NAAG Consumer Protection Committee appointed an 11 state member Task Force to study the ATV safety issue and report its findings and recommendations to the National Association of Attorneys General; and

WHEREAS, the Task Force undertook an in-depth analysis of ATV safety and the terms of the federal court settlement, and compiled its findings into a comprehensive report circulated to all Attorneys General; and

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1) Endorses the report and adopts it as the Report and Recommendations of the National Association of Attorneys General; and

2) Authorizes the Executive Director to transmit copies of this resolution and the Report and Recommendations to the Administration, members of Congress, and to other interested organizations and individuals.

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Mr. **Florio**. Mr. Barton.

Mr. **Barton**. Thank you, Mr. Chairman. I inadvertently failed to yield to Mr. Nielson of Utah during the previous panel. I would like at this time to yield to him, so that he could ask his questions. He is a senior member and a good friend, and when he is through then I will have some questions.

Mr. **Nielson**. Unfortunately, the one that I was going to ask the question is no longer at the panel. I was simply going to suggest and reinforce what you said about the Commission not being as forthcoming in requests from legislators as they implied that they were.

My colleague Larry Craig, who sits on the Government Operations Committee with me, complained several times that the Consumer Product Safety Commission was not responding to his very many requests. I understand they have now done so. I just wanted to extend your point that you made very well.

I thank you for your courtesy.

Mr. **Barton**. Mr. Attorney General, I first wanted to ask you if you are here as an authorized spokesman for the State Attorney General's Association?

Mr. **Cody**. I am, to this extent. Each State is independent and has its own programs and processes. We have a national association. I have been Chairman of a special task force on all terrain vehicles. You may have received a copy of the task force report that we put together.

At our meeting here in Washington on Sunday, I presented a resolution to the body. That resolution requested the National Association of Attorneys General to adopt our task force findings as an official National Association report. That task force was discussed, and each Attorney General who was present—and I might say that there were between 45 to almost every Attorney General was in attendance—voted unanimously to adopt the task force findings.

Basically, without going into any detail, those findings indicated that we felt the Consent Decree was a first step in the right direction, but it has numerous inadequacies and there was a national problem that required action by the Congress as well as by the States.

Mr. **Barton**. Based on your leadership of the task force in this recent meeting, would it be fair to say that in your opinion, the Association or the majority of the Attorney Generals would be supportive of the legislation that we are holding this hearing on?

Mr. **Cody**. That is my opinion.

Mr. **Barton**. Let me ask a more detailed question. I understand that down in Virginia in the recent Virginia Legislative session, there was an attempt made to pass a State law that set some age restrictions on when ATV's could be used, and that the ATV industry and their association lobbied very heavily against it and did everything they could to kill it. They had a bill introduced to water it down.

Could you comment on that, to the extent of your knowledge?

Mr. **Cody**. Yes. Again, as Chairman of the Task Force, I have received reports from other States about what is happening. That is, frankly, one of the things that we have been most concerned about.

You see, the settlement between the Justice Department and the manufacturers only deals with the manufacturers.

In the preliminary Consent Decree and in the Final Consent Decree, the manufacturers indicate that they agree to use their best efforts to not in any way oppose State safety legislation. Consequently, the States went out and we have adopted model legislation which will fit in tandem with what the consent settlement did.

You know, eliminate drivers of alcohol use, passengers, helmets, don't let them be on roads, safety requirements and age restriction of not having licenses and registration for under 16-year-olds.

What happened in the Virginia legislature and what we have not gotten indication what will happen in the Tennessee legislation, was that the dealers, who are 5,000 around the country, simply were taking the position of look, that's the manufacturers business. We are not bound by what happened in that settlement. We don't like it and we don't think there's anything wrong with ATV's. We think they are safe, and we are going to lobby to oppose this State legislation.

I will know more of what is going to happen in Tennessee next week. That is certainly what happened in Virginia.

Mr. **Barton**. Because they are not a manufacturer, they are saying it's only the manufacturers and dealers who are not bound by it. Then the manufacturers who have founded this association, this SVIA Association, are encouraging that Association also to lobby against some of the model State laws that your group has worked so hard to formulate; is that accurate?

Mr. **Cody**. We have received correspondence, both verbally and in writing from physicians and others, who are actively supporting safety legislation in Virginia. A tremendous lobbying effort was made to defeat that safety legislation by the ATV industry, if not at the manufacturer level, certainly throughout the industry.

Mr. **Barton**. One final question. I know that you have a plane to catch.

Mr. **Cody**. I think that plane is gone.

Mr. **Barton**. I have missed a few myself. In your opinion and in the opinion of the Association to the extent you can speak for it, if we were to pass the bill that is before us in basically the same form that is here today, would that help you or hurt you in your efforts at the State level to get State legislation.

Mr. **Cody**. I think it would help us, as has been said by previous witnesses. Action of this sort will indicate to State legislators that Congress is not just going to let the States hang out there and take tough actions alone. The Congress is concerned that it is a national problem, that this is one of those unique aspects of our Federal system.

The Congress, on a refund measure, can take this kind of action and the States can then step in with their mandate under their policy authority to deal with safety legislation within the States. I think it would help us very much.

Mr. **Barton**. I want to thank you and your Association for the fine work you have done. I think it should be a collaborative effort. Some areas of my bill are silent, because I happen to think that the licensing requirements should be done at the State levels.

With regard to the age restrictions—you know the folks in Tennessee may have a little different viewpoint than the folks in Texas or the folks in Utah. If we can set the national guidelines requiring a national refund, some national standards as far as safety and then the State legislatures can go in and determine in what ways they want the vehicles to be used and at what level they have to be licensed and things like that, it should work in a very cooperative fashion.

Mr. CODY. That is exactly what we have proposed and we are drafting model State legislation which will be available to the States which will basically say for national training programs, let's see how that works. Let's cooperate with it. Those things that the States need to do, let's fill in the gaps.

Mr. BARTON. One final question. I have a letter that was addressed to you dated February 10, 1988 from Professor Jaeger, Assistant Professor of Neurosurgery and Epidemiology at the University of Virginia. Would you have any objection if I submitted this for the record?

Mr. CODY. I would not. I think that Dr. Jaeger would—when she contacted me as a result of my being the Chairman of the Task Force for the other Attorneys General, she said do you know what is happening out there in spite of the fact that they say they are not going to oppose safety legislation what they have done in Virginia. I think it would be helpful to be in the record.

Mr. BARTON. Mr. Chairman, I would submit this letter for the record.

Mr. FLORIO. Without objection, the letter will be placed into the official record.

[The letter follows:]

Box 180
UNIVERSITY OF VIRGINIA MEDICAL CENTER
DEPARTMENT OF NEUROLOGICAL SURGERY
CHARLOTTESVILLE 22908

February 10, 1988

Attorney General Michael Cody
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Dear Attorney General Cody:

I am writing you about disturbing developments in national and state efforts to reduce the number of injuries and deaths caused by all terrain vehicles (ATVs). Just two weeks after the announcement by the Consumer Product Safety Commission (CPSC) that a settlement had been reached with ATV manufacturers, a bill was introduced into the Virginia legislature that would prohibit use of ATVs by children under 16. There were other provisions in the bill including mandatory helmet use and a prohibition on carrying passengers (bill enclosed). The supporters of the bill hoped that the consent decree would provide some protection from ATV industry opposition since it specified that manufacturers were prohibited from lobbying against state legislation mandating certain age restrictions. Our Attorney General's office, as the enforcement agent of the consent decree, made it known at a public hearing that it would be vigilant of the industry's activities during the legislative session to verify compliance with the consent decree.

Representatives of the ATV industry constituted the driving force behind the opposition to our bill. The Specialty Vehicle Institute of America (SVIA), the organization created by the five ATV companies to deal with the ATV safety problem, sponsored an intense campaign against our bill, and age restriction of users was the major focus of opposition. When we saw that the age restriction was the major obstacle to passage of the bill, it was amended to match the age limits specified in the consent decree (allowing children 12-16 to ride 70-90cc ATVs). We believed that the industry would have to stop lobbying against the age restrictions to remain in compliance with the consent decree. However, this did not happen. The SVIA lobbyist asked a House member to sponsor an opposing bill in the House that mandated helmet use and prohibited passengers but did not restrict the age of users. The sponsor of this bill, Delegate Dickinson, told me personally that the ATV industry asked him to sponsor this bill so that it could be used to "water down" the Senate bill which the industry felt was "too restrictive." Unfortunately, our Senate bill never made it out of the Transportation Committee. After its defeat, we learned that Virginia's "top lobbyist" had been hired by SVIA to head off safety legislation. As soon as our bill failed in the Senate, Delegate Dickinson was asked by the SVIA lobbyist to withdraw the House bill altogether, which he did.

When we made inquiries to the Attorney General's office, we were told that, technically, the ATV industry did not violate the terms of

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of the consent decree because dealers and SVIA representatives are not ATV manufacturers, and consequently are not subject to the terms of the settlement. The boldness with which industry representatives lobbied against age restrictions made it emminently clear that they are bound neither by the letter nor the spirit of the consent decree. And just blocks away from the General Assembly building, new 3-wheel ATVs are still for sale.

The safety community has been greatly dismayed by the inadequacy of the CPSC settlement. Even the frail terms it contains are shot through with loopholes that allow the ATV industry to proceed with brazen disregard for government regulation and consumer safety. Of what possible use is a settlement that prohibits ATV manufacturers from certain lobbying activities, but allows them to hire representatives to lobby in their place?

It is a national shame that the Consumer Product Safety Commission has not only neglected its responsibility to take meaningful regulatory action against the ATV makers, but has also undermined state legislative initiatives by adopting a hands off policy with this powerful, and deadly, industry. I hope that our experience in Virginia demonstrates that initiatives to prevent ATV injuries and deaths cannot be successful if they depend on the good faith of the ATV industry.

Thank you for your continuing contributions to solving this tragic problem. I will be at your disposal if I can assist you in your efforts to put a halt to the ATV carnage.

Sincerely,

Janine Jagger

Janine Jagger, M.P.H., Ph.D.
Assistant Professor of Neurosurgery
and Epidemiology

Mr. Barton. I yield back to the Chair.

Mr. Florio. Does the gentleman from Utah have any questions?

Mr. Nielson. Yes. Congratulations to you for being the Chairman of this committee. Let me ask you about another task force, the CPSC ATV Task Force. They recommended the States could be helpful in reducing ATV injuries by imposing such requirements as licensing, minimum age, and also mandatory equipment such as helmets.

Has Tennessee done any of those?

Mr. Cody. We have legislation introduced in both the House and the Senate to provide this year, for those——

Mr. Nielson. Minimum age?

Mr. Cody. Yes. Those requirements. It will be up in the Government Operations Committee on the Senate side tomorrow, and I will be testifying there. It will be up in the House next week. I am hopeful that the Governor will have legislation on his desk during this session.

Mr. Nielson. In view of the fact that States have not yet passed such, even though you have model legislation, is it fair to criticize CPSC which is trying to do something about the problem when the States have done nothing?

Mr. Cody. Representative, CPSC had this matter 4 years ago. We have hoped that there would be a national response to the problem. We have worked with the Consumer Product Safety Commission and others in that direction.

I think the States felt that they are going to do their part and I hope that will be the case.

Mr. Nielson. So, it's not a matter of not wanting to do it, it is just that they are waiting for the Federal to take the lead. Is what you are saying?

Mr. Cody. We think it is a national problem, yes we do.

Mr. Nielson. Wouldn't it have been possible for States such as Tennessee to have some license for ATV operators or some minimum age limits, or something of that nature? You've known about the problem for 4 years yourself.

Mr. Cody. Yes, and I am critical of the fact that we have not acted quicker. Whether this Committee or CPSC or the State or anyone else takes action that is going to save a child's life, I think that is what all of us ought to be doing. I am not being critical, except to the extent that I am critical to all of us.

Mr. Nielson. You support the portion of H.R. 3991 for automatic refunds for persons who return three-wheel ATV's. Have you run any kind of action against the manufacturers in Tennessee?

Mr. Cody. No, we have not.

Mr. Nielson. Why not?

Mr. Cody. Again——

Mr. Nielson. You had a 13-year-old just killed on an ATV just recently. No action has been taken or requested against the ATV manufacturer?

Mr. Cody. We have filed an Amicus brief in the Federal litigation that is now existing. There may be action by the States in the Philadelphia class action, and there may be individual actions by various States. The States as a whole, cannot bring an action. It will have to be individual action. We will consider that.

Mr. Nielson. Do you know any State which has brought any action in a similar case?

Mr. Cody. No.

Mr. Nielson. So the Association of Attorneys General who recommends such things have not felt it necessary to bring such action?

Mr. Cody. We haven't but we will if there is inadequate response on the Federal level.

Mr. Nielson. Do you think that your actions in those areas in the States are going to put more pressure on us to act sooner? In other words, could you have been a positive influence to get this problem solved earlier had you taken more aggressive action at the State level?

Mr. Cody. I am not sure that our filing lawsuits against ATV manufacturers would have made Congress act any faster.

Mr. Nielson. It also doesn't have the opposite effect. The fact that you have not seen fit to sue, none of you have seen fit to sue, hasn't that caused the complacency in the industry and among those also buying the goods?

Mr. Cody. I don't think so, Congressman, because I believe—there is talk that the Consent Decree will prevent ATV three-wheelers from being sold in the future. I believe that that decision was made by the manufacturers as a market decision, because of the liability that they are now exposed to through private suits.

We can't represent—when a child is injured lawsuits are filed against the manufacturers by lawyers representing that family. Those lawsuits have been filed across the country.

Mr. Nielson. But nothing through the Attorney General's office, as far as you know.

Mr. Cody. We have not brought a consumer action based on what we consider to be the deceptive advertising.

Mr. Nielson. Again, let me ask the question. Do you think it is fair to castigate CPSC when their responsibility has to do with safety when none of the States have taken any action themselves?

Mr. Cody. I think it is fair when CPSC has the responsibility to deal with this problem, and we believe that they have not expeditiously and adequately dealt with the problem.

Mr. Nielson. And none of you have asked for refunds on your own?

Mr. Cody. I am not sure that we have authority to ask for refunds.

Mr. Nielson. Don't you have authority in State legislatures to do that sort of thing? I was a State legislature, and I used to think that we could do anything we wanted to.

Mr. Cody. We have consumer protection statutes, but it is unclear whether or not we have for instance under the Tennessee statute, the authority to require a refund in a national forum such as this.

Mr. Nielson. I have to say that I think the States are trying to shift the burden to the Federal Government. Frankly, I think most of these problems should be done at the State level, licensing, age limits, a lot of things of that nature should have been done earlier or at least pressure on the uniform State law should have been put forth.

Frankly, I think that we have all dropped the ball. It doesn't really serve much purpose to criticize the Federal when the States could have also done something.

Mr. CODY. I could not agree with your more, that there has been an inadequate response to this tremendous problem that the ATV's have caused, both on the Agency, the State and the Federal level.

Mr. NIELSON. Thank you.

Mr. FLORIO. Let me just conclude by saying that I appreciate your participation and testimony. I was particularly struck by your point about the impact of the resale market on the safety questions associated with three-wheeled ATV's.

If you are talking about no refunds and there are no limitations whatsoever on the resale market, it may very well be that people become informed and want to unload the ATV, and sell with no warnings whatsoever to other people. We may be inadvertently facilitating more accidents as a result of the failure to have the refund system in the law.

I want to thank you very much, and thank you for your information. The committee is going to stand in recess until 1 p.m.

[Brief recess.]

Mr. FLORIO. The subcommittee will please come to order We are pleased to have as our next panel of witnesses, Dr. Richard M. Narkewicz, President of the American Academy of Pediatrics. We are pleased to have you here before our committee. Ms. Susan Weiss, Legislative Representative of the Consumer Federation of America. We are pleased to have you back before our committee as well.

Your statements will be put into the record. Dr. Narkewicz, we would be pleased to hear from you.

STATEMENTS OF RICHARD M. NARKEWICZ, PRESIDENT, AMERICAN ACADEMY OF PEDIATRICS; AND SUSAN A. WEISS, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA

Mr. NARKEWICZ. Good afternoon, Mr. Chairman. My name is Dr. Richard Narkewicz, and I am President of the American Academy of Pediatrics. This is an international organization of 34,000 pediatricians, who not only provide health care for the children, but share a longstanding and deep commitment to protect them from injuries. It is with this commitment in mind that I submit the serious criticisms of the Government's proposed Consent Decree on all terrain vehicles, as well as our more favorable comments on the promising legislation recently introduced by your colleague, Congressman Barton.

As you know, Mr. Chairman, the Academy has been here before as you have been, to underscore for this panel and others in the House and Senate, the urgency of addressing ATV's. Put flatly, they are death traps unleashed on unsuspecting American families. The price has been high.

Pediatricians around the country see it paid every day. More and more of our young patients are being killed or maimed by these demonstrably dangerous yet very popular machines.

I say to you now that the American Academy of Pediatrics will keep coming back again and again, until Government fulfills its responsibility by getting these extremely hazardous vehicles out of the hands of children.

No responsible pediatrician, no responsible parent, no responsible political leader should settle for anything less. But we are being asked to. The deal that has been struck among the Consumer Product Safety Commission, the Justice Department and the ATV industry is inadequate.

It does virtually nothing to curb or discourage the use of four-wheel ATV's, but it does literally nothing to assist families who bought ATV's for their children, often as a result of deceptive feel good advertising. It does not satisfactorily address the inability of children under 16 years of age to handle such complex and inherently unstable machines.

Fortunately, other powerful voices from outside the administration and Agency offer promise. The Academy applauds the unrelenting efforts of so many champions for children on Capitol Hill, certainly including you and your colleagues on this subcommittee Mr. Chairman, who refuse to submit to weak agreements.

I would especially like to extend my personal appreciation this afternoon to Congressman Barton. His All Terrain Vehicle User Safety and Equity Act clearly reflects his deep commitment to public safety. More particularly, to the safety of our children. H.R. 3991 recognizes that ATV's despite the slick insistence of industry ads, are not fun for the whole family; they are cripplers and killers.

The toll is already appalling. Since 1982, more than 900 persons have been killed in ATV accidents; nearly half of these victims were under 16 years of age; and many of them were under 12, and that's what concerns us as pediatricians. Those are just the fatalities.

There have been nearly 300,000 ATV related injuries, hundreds of which resulted in permanent brain and spinal chord injuries. Pediatricians around the country continue to warn parents of the risk involved with children riding ATV's, the casualties keep piling up.

We alone as pediatricians cannot remedy this problem. We know it will take firm and skillful political leadership such as that in evidence today, to make a difference. We simply cannot delay and we cannot meekly accept this pending agreement with the ATV industry which leaves our children at the preface.

To be sure, the Consent Decree trumpets its emphasis on warning the public of ATV risks. It is the judgment of the academy however, that this is perhaps the very least that Justice, the Commission and industry can offer to do to attempt to protect American children. In the first place, warnings alone probably won't work, especially with teenagers who all too often regard themselves as indestructible.

Moreover, by providing marginal safeguards, there is no refund proposal for example, to help get the 1.6 million three-wheel ATV's off the market. This agreement could lull parents and children into believing that effective action actually has been taken and that ATV's are somehow safe.

To underscore this, Mr. Chairman, I just came from a meeting of several pediatricians on the West Coast who were amazed that you had called this hearing on ATV's because sophisticated as they are, they said the problem has obviously been solved because we have read in the paper about the Consent Decree. But nothing could be so incorrect.

Mr. Chairman, I must say to you that pediatricians do not regard the regulation of ATV's as a complicated issue. Recent studies document conclusively the severe consequences of ATV use by children. Permit me. Spinal chord injury resulting from ATV mishaps was sustained by five children cared for over a 15 month period at the University of Alabama.

Basilar skull fractures, liver lacerations and splenic rupture were among injuries resulting in ATV spills in a series of admissions to the pediatric trauma service at the University of Virginia. Seven children suffered head trauma from ATV incidents treated at Gillette Childrens Hospital in St. Paul.

At Virginia, the average hospital stay was 20 days. In Minnesota, the majority of the children suffered permanent damage or died. The litany is painful, persuasive and endless. Because of these vehicles, our children are losing life and limb. Yet, unlike so many childhood diseases with which we grapple, the cause of this carnage is not obscure.

Our experience in child development makes it clear that children under the age of 16 lack the coordination, balance, reflexes, perception, maturity and incidentally, the judgment to operate three and four-wheeled ATV's safely.

No labeling, no education, no training, no practice, no supervision, could suffice to provide this developmental maturity which should help, I believe, solve some of the guilt which some of our parents have at the present time over this issue. The morbidity and mortality rates will not substantially change as long as these vehicles are available to children.

Mr. Chairman, pediatricians are not prepared to question the motives of the principal who negotiated this terribly deficient ATV deal for the children of this country, but neither are we prepared to accept the agreement.

As a result of this lawsuit recently filed in Federal District Court to defer action on the proposed Consent Decree, the Academy and others now will have an opportunity over the next 2 weeks to illuminate for the court, the disservice being done to our children.

That effort is necessary but not sufficient. No foreseeable judicial remedy will compel or can compel the Government and industry to act equitably in this matter. Thus, the Academy continues to offer its vigorous support of pending legislation that will restrict ATV's broadly and efficaciously.

Pediatricians believe that ATV's are the most serious, new product related hazard to the health and well being of American Children. Their availability and use must be restricted aggressively.

Representative Barton's bill is a reasonable and good faith effort to that end. H.R. 3991 moves substantially beyond the Consent Decree in a number of important areas. Most notably, by banning more broadly the sale of three-wheel ATV's and by requiring manufacturers to offer refunds to past purchasers of three-wheel ATV's.

It is a measure imminently worthy of support. Mr. Chairman, with due respect to the Congressman and to this committee, it simply doesn't go far enough. Pediatricians want all terrain vehicles out of the hands of American children period.

H.R. 3991 comprises many of the safeguards that the Academy favors and we will work diligently to see them included in any ultimate legislative remedy. Yet, the ideal solution in support of child health also would include first, a ban on all future commercial sales of three-wheel ATV's; and of four-wheel ATV's specifically designed for use by children under the age of 16. Second, reasonable refunds to consumers who purchase three-wheel ATV's, who purchased any ATV specifically designed for use by children under the age of 16, or who purchased any adult-sized ATV intended for use by children under the age of 16.

Third, expeditious rulemaking to implement the statute. The risks associated with ATV's have been fully documented and discussed. Meanwhile, 20 persons are dying and countless others are being injured every month. The American children have a right to expect prompt implementation of these important new protections.

Mr. Chairman, through your laudable efforts, through thoughtful legislation such as that of Congressman Barton under consideration today and through the hard work and cooperation of your colleagues here and in the Senate, the Academy is confident that ATV's will be exposed as a menace to the children of this Nation, and that they will be placed off limits.

It is up to all of us to protect those who cannot protect themselves. Thank you, Mr. Chairman.

[The prepared statement of Mr. Narkewicz follows:]

STATEMENT OF RICHARD M. NARKEWICZ

Good morning, Mr. Chairman. My name is Richard M. Narkewicz, M.D., and I am president of the American Academy of Pediatrics, an international organization whose 34,000 pediatricians not only provide health care for children but share a longstanding and deep commitment to protect them from injuries. It is with this commitment in mind, and with the certain knowledge that American children would remain seriously imperiled by the newly proposed Final Consent Decree on all-terrain vehicles (ATV's), that I submit these comments and criticisms.

We have been here before, Mr. Chairman, to underscore for this panel and for others in the House and Senate the urgency of addressing ATV's. Put flatly, they are deathtraps unleashed on unsuspecting American families. And the price has been high—pediatricians around the country see it paid every day. More and more of our young patients are being killed or maimed by these demonstrably dangerous yet popular machines. I say to you now that the American Academy of Pediatrics will keep coming back—again and again—until Government fulfills its responsibility by getting these extremely hazardous vehicles out of the hands of children. No responsible pediatrician, no responsible parent, no responsible political leader should settle for anything less.

But we are being asked to. The deal that has been struck among the Consumer Product Safety Commission, the Justice Department and the ATV industry is inadequate. It does virtually nothing to curb the scourge of four-wheel ATV's; it does literally nothing to assist families who bought ATV's for their children, often as a result of fraudulent, feel-good advertisements; and it does not satisfactorily address the ability of children under 16 years of age to handle such complex and inherently unstable machines. Concerned citizens, in the interest of child health, need not be deterred by such regrettably ineffective negotiations on the part of its current Federal advocates for public safety.

Fortunately, other powerful voices from outside the administration and Agency offer promise. The Academy applauds the unrelenting efforts of so many champions for children on Capitol Hill, certainly including you and your colleagues on this subcommittee, Mr. Chairman, who refuse to submit to weak agreements. I would especially like to extend my appreciation this morning to Congressman Joe Barton. His promising All-Terrain Vehicle User Safety & Equity Act, H.R. 3991, clearly recognizes that ATV's, despite the slick insistence of industry ads, are not "fun for the whole family." They are killers and cripplers.

The toll is already appalling. Since 1982 more than 900 persons have been killed in ATV accidents. Nearly half of these victims were under 16 years of age, and many of them were under 12. Those are just the fatalities. There have been nearly 300,000 ATV-related injuries, hundreds of which resulted in permanent brain and spinal cord injuries. How many more of our children and grandchildren must suffer death or disability before prudent measures are taken to prevent these predictable, unnecessary tragedies?

Pediatricians around the country continue to warn parents of the risks involved with children riding ATV's, but the casualties keep piling up. We alone cannot remedy this problem. We know it will take firm and skillful political leadership, such as that in evidence today, to make a difference. But we simply cannot delay, and we cannot meekly accept this pending agreement with the ATV industry, which leaves our children at the precipice. Incredulous parents of victims ask time and again, and with every right, "Why didn't someone warn us of the dangers? Why are these machines even allowed on the market?"

To be sure the Consent Decree trumpets its emphasis on warning the public of ATV risks. It is the judgment of the Academy, however, that this is the least—perhaps the very least—that Justice, the Commission and industry can offer to do to attempt to protect American children. In the first place, warnings alone probably won't work, especially with teenagers, who all too often regard themselves as indestructible. Moreover, by providing only marginal safeguards this agreement could lull parents and children into believing that effective action actually has been taken, and that ATV's now are somehow safe.

Mr. Chairman, as physicians dedicated to the promotion of child health, I must say to you that we do not regard the regulation of ATV's as a complicated issue. Recent studies document conclusively the severe consequences of ATV use by children. Spinal cord injury resulting from ATV mishaps was sustained by five children cared for over a 15-month period at the University of Alabama. Basilar skull fractures, liver lacerations and splenic rupture were among injuries resulting from ATV spills in a series of 12 admissions over a 26-month period to the pediatric trauma service at the University of Virginia. Seven children suffered head trauma from ATV incidents treated at the Gillette Children's Hospital in St. Paul. At Virginia the average hospital stay was 20 days. The majority of the Minnesota children suffered permanent damage or died.

The litany is painful, persuasive and endless—because of these vehicles, our children are losing life and limb. yet unlike so many childhood diseases with which we grapple, the cause of this carnage is not obscure. Our experience in child development makes clear that children lack the coordination, balance, reflexes, perception, maturity and judgment to operate three- and four-wheeled ATV's safely. No labeling, no education, no training, no practice, no supervision could suffice to provide this developmental maturity. The morbidity and mortality rates will not substantially change as long as these vehicles are available to children.

Mr. Chairman, what the Government finally has done, and only after years of pressure from consumer groups and legislators, is reach a "compromise" agreement with ATV manufacturers. But the only issue compromised in this deal is public safety, certainly that of children. The CPSC and the Justice Department announced on December 30, after the holiday shopping season, their proposed agreement with the industry to ban future sales of three-wheel ATV's and to require manufacturers to undertake buyer-education campaigns. That agreement, of course, which was formally consummated 2 days ago, offers no recourse for families who already own ATV's. And with no refund or recall provision included in the agreement, 1.6 million three-wheel vehicles linger like ticking time bombs in the hands of consumers, including many American children. Three-wheelers have an average life span of 7 years, so the AAP is bracing for the wave of children's death and injury to continue well into the 1990's.

Pediatricians are also bracing for undiminished deaths and injuries from four-wheel ATV's, which we regard as essentially as dangerous as three-wheelers in the hands of children. Regrettably, they will still be legally available for sale—some to children as young as age 12—under the proposed deal. The Academy strongly believes that no child under the age of 16 should be permitted to operate any ATV. Indeed, on the very day that the parties announced the preliminary Consent Decree, a 16-year-old boy was killed in upstate New York when his four-wheeler flipped over and crushed him. Since these models are newer, data is scarce, but of the ATV deaths reported to the CPSC in the first 5 months of 1987, 45 percent involved four-wheel ATV's. The Consent Decree totally ignores this issue.

Commissioner Anne Graham of the CPSC published an eloquent dissent on December 30 with which the Academy fully concurs. "Since 1984 the Commission has been working with the (ATV) industry to no avail. This industry's record is not credible," Commissioner Graham stated. "For the most part, this (ATV) industry has not demonstrated any responsible self-administered cautions or safeguards when the hazard to the consumer became apparent. Industry's inaction is particularly difficult to believe with regard to children." The Commissioner went on to emphasize that "the Government, to the best of my knowledge, has never faced a problem in its control that allowed 20 Americans to die each month."

Mr. Chairman, pediatricians are not prepared to question the motives of the principals who negotiated this terribly deficient ATV deal for the children of this country. But neither are we prepared to accept the agreement. As a result of its lawsuit recently filed in Federal district court to defer action on the proposed Consent Decree, the Academy and others now will have an opportunity over the next 2 weeks to illuminate for the court the disservice being done to our children.

That effort is necessary but not sufficient. No foreseeable judicial remedy will compel or can compel the Government and industry to act equitably in this matter. Thus the Academy continues to offer its vigorous support of pending legislation that would restrict ATV's broadly and efficaciously. Pediatricians believe that ATV's are the most serious new product-related hazard to the health and well-being of American children, and their availability and use must be restricted aggressively.

Representative Barton's bill is a reasonable and good-faith effort to that end. H.R. 3991 moves substantially beyond the Consent Decree in a number of important areas, most notably by banning more broadly the sale of three-wheel ATV's and by requiring manufacturers to offer refunds to past purchasers of three-wheel ATV's. It is a measure eminently worthy of support insofar as it goes.

But Mr. Chairman, with due respect to the Congressman and to this committee, it simply doesn't go far enough. Pediatricians want all-terrain vehicles out of the hands of American children. Period. H.R. 3991 comprises many of the safeguards that the Academy favors, and we will work diligently to see them included in any ultimate legislative remedy. Yet the ideal solution in support of child health would include:

—A ban on all future sales of three-wheel ATV's, and of four-wheel ATV's specifically designed for use by children under the age of 16.

—Reasonable refunds to consumers who purchased three-wheel ATV's, who purchased any ATV specifically designed for use by children under the age of 16, or who purchased any adult-sized ATV intended for use by children under the age of 16.

—Expeditious rulemaking to implement the statute.

Congress can't do everything. While new laws may be enacted here that ban the commercial sale of certain ATV's, private "family to family" purchases are another matter. Information recently developed by the Consumer Federation of America suggests that the "black market" for ATV's is flourishing, in Arizona at least, and that is a bad sign. The heavy volume of newspaper advertisements for used ATV's can only result in shifting the threat of ATV-related death or injury from one family to another. For its part, the Academy has developed model State legislation, and our pediatricians will work in capitals across the country to promote licensure for ATV operators at a minimum age of 16.

Congress could do more to serve children, however, and we respectfully urge you to. With regard to four-wheel ATV's, for example, there continues to be, in the judgment of the Academy, too little attention to the relative peril. As we have mentioned, the CPSC's own figures for the first 5 months of last year show that nearly half of the ATV-related deaths occurred in mishaps involving four-wheelers. With regard to ATV's specifically designed for child operators, the Academy would only reiterate its professional conclusion that children under the age of 16 simply lack the capacity to operate any ATV safely.

Finally, as someone who has followed this issue closely over the past several years, I would also urge that Congress direct the Government, upon the enactment of any ATV legislation, to promulgate its rules as promptly as possible. The risks associated with ATV's have been fully documented and discussed; meanwhile, 20 persons are dying and countless others are being injured every month. American children have a right to expect expeditious implementation of these important new protections.

Mr. Chairman, through your laudable efforts, through promising legislation such as that of Congressman Barton under consideration today, and through the hard work and cooperation of your colleagues here and in the Senate, the Academy is confident that ATV's will be exposed as a menace to the children of this Nation, and that they will be placed off limits. It is up to all of us to protect those who cannot protect themselves.

Mr. Florio. Ms. Weiss.

STATEMENT OF SUSAN WEISS

Ms. Weiss. Thank you. Mr. Chairman and members of the subcommittee, I am Susan Weiss, legislative representative for Consumer Federation of America. CFA is the Nation's largest consumer advocacy organization. We represent more than 240 local, State and national consumer groups, with a combined membership of more than 50 million people.

Product Safety and the actions of the CPSC are among CFA's highest priorities. Monitoring of the Commission over recent years has revealed a rather dismal picture of this Nation's watchdog for product safety. We have watched the CPSC drag its feet on critical regulatory intervention in the face of dangerous products, choosing too often to defer to timetables set by industry for voluntary action.

The timetable has meant delay and inaction, often at great cost. ATV's are certainly the most egregious case in point. The Agency's failure to adequately protect consumers, and in particular the Nation's children from the hazards of these dangerous vehicles makes Congressional action imperative.

This week the CPSC and ATV manufacturers finalized a Consent Decree intended to remedy a safety void that has evolved as a result of past Government inaction on these vehicles. While providing detailed notices, warnings and training plans for three and four-wheeled ATV's, which we certainly welcome, this final agreement does fall short of remedying critical safety concerns.

We very much applaud your efforts, Mr. Barton, and your leadership and that of your colleagues in advancing this legislation that promises to take up where the CPSC has faltered.

H.R. 3991 demonstrates that safety is not and cannot be a partisan issue. We appreciate the opportunity to present our views today on this bill and on the final decree. As you have heard over and over again today, the number of deaths and injuries from ATV's are staggering.

The death toll since 1982 now nears 1,000 and serious injuries are estimated at 350,000. Yet, these vehicles were marketed as safe and easy to ride, family fun, sold too often with little or no warning as to the risks of death or injury actually associated with operating these vehicles, particularly toward children.

The agreement finalized this week fails to get any of the estimated 1.5 million three-wheeled vehicles off the market, and further to get ATV's or adult-sized ATV's purchased for children under 16 out of their hands. By abandoning the refund provision, the Government abandoned its sole hope for reducing the number of these vehicles in the marketplace. As Commissioner Graham said this morning, that is tantamount to reducing the number of deaths and injuries.

Further, the consumer who bought a product he or she believed to be safe for themselves or for their children, is now left holding the bag. As the chairman suggested earlier, one alarming outgrowth of the decrees failure to provide refunds may be the evolution of a private resale market for used three-wheeled vehicles among consumers.

A recent survey that CFA has done of a major Arizona newspaper, revealed that 81 percent of the vehicles being sold were three-wheeled vehicles; 86 percent of those were from model years 1983, 1984, 1985 and 1986. These sales can well continue into the next decade, given the average 7 year lifespan of a three-wheeled vehicle.

If consumers were provided the opportunity for a refund, ATV owners would certainly be less likely to voice these unsafe vehicles off on other unprotected consumers. We feel like that is a very critical point.

We don't want to pass the injury from one family to another. The decree fails to advance adequate protections for children under 16 from the unreasonable hazards of ATV's. The consensus is clear that the risk of harm is substantially magnified when ATV's are operated by children under age 16. Yet, instead of clearly and unequivocally precluding children under 16 from riding ATV's, the decree permits manufacturers to continue marketing certain sized ATV's for children 12 to 16.

You have heard all morning about the message. Our feeling is that this also sends a dangerous and confusing message. Even the smallest ATV's for young children can apparently travel upwards of 28 miles per hour. We just don't know how many more children have to die and suffer permanent injuries before the message is made clear that they are not safe for children.

While the training plans, the warnings, the notices afforded by the decree again are surely welcomed and certainly are long overdue safety measures, we don't believe that they are sufficient to assure that the carnage from these vehicles will cease.

The deficiencies in the decree necessitate legislative intervention. The measures provided by H.R. 3991 are warranted and critical. By requiring refunds to past purchasers of three-wheeled ATV's and by prohibiting commercial sales of new or resale of used three-wheel ATV's H.R. 3991 significantly expands the protections afforded consumers beyond the terms of the decree.

It creates an incentive to voluntarily turn in these vehicles and serves as a disincentive to sell them privately to other consumers. A Government mandated refund also sends an unambiguous message again, that these are dangerous vehicles and should not be driven.

The bill would also finally generate enforceable rules for safety measures and performance and design standards. Despite the fact that CPSC initiated rulemaking nearly 3 years ago, there are still no Government standards for these vehicles and we are pleased that this bill recognizes the need for that.

They are needed and they are needed soon. While we very much support the protections and your efforts under the legislation at hand, we would urge that you consider certain additional measures to broaden those protections, particularly for children.

In light of the unquestionable risk we have heard today for children under 16, we would urge that the refund provision in the bill also include ATV's purchased for children under 16, adult-sized vehicles for children under 16, and further, that there be a prohibition against the sales of ATV's designed for use by children under 16.

Finally, in light of the monthly death and injury count from ATV use, we would also urge that the safety rule required by the bill be promulgated in a shorter period of time than the 6 months now prescribed. There are, in effect, emergency measures that should and can be put in place quickly.

The deficiencies in the decree bespeak the need for quick passage of this legislation to ensure that long, overdue safety measures are finally put in place for ATV's and to revive a sleeping product safety agency. We strongly support your vigilance and that of your colleagues in pursuing this end.

[The prepared statement of Ms. Weiss follows:]

Statement of Susan A. Weiss

Mr. Chairman and members of the subcommittee, I am Susan Weiss, Legislative Representative for Consumer Federation of America. CFA is the Nation's largest consumer advocacy organization, representing more than 240 local, State and national consumer organizations with a combined membership of more than 50 million people.

Product safety and the actions of the U.S. Consumer Product Safety Commission (CPSC) are among CFA's highest priorities. Monitoring of the Commission over recent years has revealed a dismal picture of this Nation's watchdog for product safety. The CPSC has dragged its feet on critical regulatory intervention in the face of dangerous products, choosing too often to defer to industry's timetable for voluntary action. And that timetable has meant delay and inaction, often at a great cost. All Terrain Vehicles (ATV's) are certainly the most egregious case in point. The Agency's failure to adequately protect consumers, in particular the Nation's children, from the hazards of these dangerous vehicles makes Congressional intervention imperative.

This week the CPSC and ATV manufacturers finalized a Consent Decree intended to remedy a safety void that has grown out of Government inaction on ATV's. The decree, however, falls far short of this goal, failing to provide effective means to get—and keep—even the most dangerous of these vehicles off the market and out of the hands of children and other unsuspecting consumers. We applaud the leadership of Congressman Joe Barton and his colleagues on the committee in advancing legislation that promises to take up where the CPSC has clearly faltered. H.R. 3991 is a strong affirmation that safety is not and cannot be a partisan issue. By requiring manufacturers to offer refunds to past purchasers who turn in their used vehicles and by prohibiting the commercial sales of new and used three-wheeled ATV's, the measure provides fundamental safeguards omitted in the final decree. We appreciate the opportunity to present our views on H.R. 3991 and on the Consent Decree.

With the death toll rapidly nearing 1,000 and serious injuries estimated at 350,000, the Commission has finalized an agreement whose terms are simply inadequate to stem this devastation. Most significantly, the decree fails to get any of the 1.5 million three-wheeled vehicles off the market and to get adult-sized four-wheeled vehicles purchased for children under 16 out of their hands. There is no recall mechanism, nor is there even a prohibition against the commercial sale of used three-wheeled ATV's. Furthermore, the protection afforded our Nation's children, who make up nearly 50 percent of those killed or injured on these vehicles, is at best minimal.

In December of 1986, having labeled ATV's "imminently hazardous," the Commission voted to proceed with an enforcement action under section 12 of the Consumer Product Safety Act. The action sought refunds for consumers who purchased three-wheeled ATV's and adult-sized ATV's intended for use by children under 16. One year of study and an estimated 200 deaths later, the Government filed its action seeking these same refunds. Yet, in the ultimate agreement reached with ATV manufacturers, the CPSC did an about face. Agreeing to abandon the refund request, the

Commission relinquished the sole means available to reduce the number of these vehicles on the market and thus reduce the potential number of deaths and injuries. Under the terms of the preliminary decree, ATV manufacturers were required to notify past purchasers of three-wheeled ATV's that they may in fact present a risk of death or serious injury and that they may be dangerous to operate. The manufacturers were then relieved of any further action with respect to these vehicles. The result: consumers are now left holding the bag.

One alarming result of the decree's failure to provide refunds appears to be the evolution of a private resale market for used three-wheeled ATV's among consumers. A recent survey of classified advertisements in a major Arizona newspaper revealed that, of the 58 ads for 75 ATV's, 81 percent of those being sold were three-wheeled vehicles. The survey also found that, of the 75 ATV's, 86 percent were from model years 1983, 1984, 1985 and 1986.

Such sales may continue well into the next decade, given the average 7-year lifespan of a three-wheeled ATV. It has been estimated that one in every three ATV's may well carry its rider to serious injury or death within this 7-year period. If the Decree had provided refunds to consumers, ATV owners would certainly be less likely to foist these unsafe vehicles off on other unprotected consumers.

Review of the decree reveals that many years of investigation and millions of taxpayer dollars later, we are left with a settlement that retreats from, rather than advances, protection of the Nation's children from this imminent and unreasonable hazard. The Government's complaint echoes the strains from every corner of the medical profession: the risk of harm presented by ATV's is substantially magnified when they are operated by children under 16. Statistics sadly bear this out: nearly half of those who die or are seriously injured on ATV's are children under 16. Pediatricians and CPSC alike recognize that children lack the cognitive skills and judgment to operate these machines safely. Yet instead of clearly and unequivocally precluding children under 16 from riding ATV's, the decree allows manufacturers to continue marketing certain sized ATV's for children. This sends a dangerous and confusing message. Even the smallest ATV's for young children can apparently travel upwards of 28 miles per hour. How many more children must die and suffer permanent injuries before the message is made clear?

Finally, the decree requires only that the manufacturers repurchase new three-wheeled vehicles from the dealers or retailers. Thus, retailers/dealers—not parties to the action and therefore not bound by its terms—may continue to sell new three-wheeled ATV's still in inventory or, more significantly, used three-wheeled vehicles that may subsequently come into inventory. Furthermore, by limiting the stop sale provision only to three-wheeled ATV's, and new ones at that, the decree creates a dangerous impression that three-wheeled ATV's are unsafe while four-wheeled vehicles are safe. Recent statistics do not bear this out. Nearly 45 percent of deaths reported thus far to the CPSC in 1987 involved four-wheeled ATV's.

These provisions of the decree, coupled certainly with others, do raise the question of exactly whom the Commission voted 2 to 1 to protect in agreeing to settle this action. While training, warnings and notice afforded by the decree are surely welcome safety measures, and certainly long overdue, they are simply not sufficient now to assure that the carnage from these vehicles will cease. The deficiencies in the decree necessitate legislative intervention.

Your vigorous efforts and that of your colleagues to reign in this Agency and address through legislation the product safety vacuum CPSC has created regarding ATV's grow more vital with each day. This Agency cannot be allowed to delay action, then rush into an incomplete response to a hazard on the magnitude of ATV's, and call that protection.

The measures provided by H.R. 3991 are warranted—and critical, since it is now clear that CPSC has fallen short in its responsibility. By requiring refunds to past purchasers of three-wheeled ATV's and by prohibiting commercial sale of new or resale of used three-wheeled ATV's, H.R. 3991 significantly expands the protection to consumers beyond that provided in the final decree. The recall mechanism creates a voluntary incentive to turn in these vehicles and serves as a disincentive to sell them privately to other consumers. A government-mandated recall also sends an unambiguous message to consumers that, at a minimum, three-wheeled ATV's are hazardous and should not be driven. Further, the bill curbs the future sale of all used three-wheelers by dealers/retailers, otherwise permissible under the terms worked out by CPSC in the decree.

The bill would also finally spawn safety measures and a performance and design standard, both of which CPSC has thus far failed to accomplish, despite having initiated rulemaking over 3 years ago. The safety measures would augment relief afforded in the decree, extending enforceable measures to both the dealers and the manufacturers. Specification of performance standards, by a date certain, clarifies the ambiguities left unresolved by the final decree.

In short, H.R. 3991 would institute vital provisions to help insure that the public is protected from the hazards of ATV's. However, we would urge that additional measures be adopted to round out those protections for public safety—in particular child safety. Because children under 16 are unquestionably the most vulnerable to ATV deaths and injuries. Therefore we urge that the refund provision in H.R. 3991 include all ATV's purchased for children under 16 years of age. We must eliminate the image that ATV's are family fun for kids; they are not. As many as 10 children under 16 years of age may die every month from ATV use. All ATV's, whether designed for children or adult-sized vehicles, must be kept out of the hands of children under 16. This action cannot be compromised; too many young lives are at stake. These are critical steps that the CPSC must be directed to take to assure that our children are finally protected from ATV hazards. We are also prepared to do whatever we can to support State licensing for ATV's, comparable to requirements for other motorized vehicles.

In light of the monthly death and injury count from ATV use, we would only urge this committee to expedite promulgation of the safety rule for training, labeling, and other safety measures. During the 6 months contemplated by the bill to finalize this rule, upwards of 120 more people may die, and countless more may be injured. And, in fact, the toll is certain to be far greater as we await enactment of this legislation. Enough is enough.

Although reality dictates that enforcement actions against private sales of three-wheeled ATV's would occur rarely if ever, we would prefer that the statute not explicitly exempt private sales. These sales should be discouraged by all possible means. Their express exemption from the statutory ban suggests an acceptability of such sales and sends a confusing message. The message should be clear: these are dangerous vehicles, and their purchase should be avoided.

The deficiencies in the decree bespeak the need for swift enactment of legislation to assure that long-overdue safety measures are put into place for ATV's and to revive a sleeping product safety agency. We strongly support your vigilance and that of your colleagues in pursuing this end.

Mr. **Florio**. Thank you both for your testimony. The gentleman from Texas.

Mr. **Barton**. Thank you, Mr. Chairman. I apologize for being back a little late. I actually did try to eat something and I understand you probably didn't. I wasn't here for your testimony, Dr. Narkewicz but I did read it carefully last night. I just want you to reinforce if you can, my conclusion from reading your testimony is that you support the bill that we have introduced here, but your association wants even stronger measures.

I believe you all would like a recall and you want to ban four-wheeled vehicles also; is that correct?

Mr. **Narkewicz**. That is correct. Unlike some of the other witnesses, Congressman Barton, I am here representing my association which are the pediatricians of this country.

I am not here because I have had a personal experience with ATV's in that one of my family has been involved in an accident, fortunately. As I looked at those statistics that were put up there, I would like to say that I don't want any of my patients, I don't want any of my grandchildren or any of your children or grandchildren to be on that list of statistics that are up there.

The pure fact of the matter is that children under the age of 16 lack the ability, the coordination and the decision power necessary to power these machines. I would point out to you, after six public hearings, the major findings of the Consumer Product Safety Commission were basically three.

First, children under 12 are unable to operate safely any sized ATV. Second, children under 16 are at greater risk of injury and death than are adults operating adult-sized ATV's. The other, of course, were the voluntary standards were inadequate.

So based on what I have just said and based on the hundreds of letters and telephone calls that I am getting from my constituents who take care of the children, our point is that three-wheeled vehicles are extremely dangerous. If you look at the statistics from last year over the first 5 months collected, half of the injuries and deaths occurred in the four-wheeled vehicles.

Based on the conclusion of what we know about children not having the ability to drive these complex vehicles under 16, we would not be satisfied until they are recalled out of the hands of 16 year olds, and that they can't be sold to anyone to be used for children under 16.

Mr. **Barton**. I would like to hear both of your responses to Mr. Chairman Scanlon's interpretation of defect, as I understood it, there is no mechanical defect. As long as there is no mechanical defect, he doesn't feel that there should be a refund.

The other two Commissioners didn't share that opinion, so it is not a majority opinion. What do you think? Do you think these vehicles are defective in a common sense?

Mr. **Narkewicz**. I look at a defect as outcome oriented. If children are dying and children are being injured, and the vehicle is the specific instrument that they are using, I would say that the vehicle is inherently unsafe and dangerous.

Ms. **Weiss**. I would absolutely agree with that. I think what we see here is a vehicle safety problem in terms of design. It is unsafe in its outcome. That has been borne out by the statistics.

Mr. **Narkewicz**. Mr. Barton, for the record, we favor refunds and not necessarily recalls.

Mr. **Barton**. OK. It was about 1 a.m. this morning when I read your testimony. Again, I have several pages of questions, but I will submit them for the record and yield back to the chairman.

Mr. **Florio**. Let me express my appreciation for the participation of the two witnesses who have been, on an ongoing basis, very cooperative with the committee. This is not the first time, of course that we have heard from the two witnesses. Dr. Narkewicz, I know that I speak for Congressman Barnard in terms of his appreciation of the expertise that you have provided to his committee and now to our committee as well.

I want to express the appreciation of the committee to both witnesses, and thank you for your participation.

Mr. **Narkewicz**. Thank you, Mr. Chairman.

Ms. **Weiss**. Thank you.

Mr. **Florio**. We are now pleased to have our last panel of witnesses, and we appreciate their patience through the course of a long day. We are pleased to have Mr. Lloyd Cutler, Wilmer, Cutler and Pickering, representing Honda; Mr. Howard Willens of the same firm, representing Honda; Mr. Douglas Toms, consultant for the American Honda Motor Corporation.

It is my understanding that they will be accompanied by individuals. I will let them make the introductions of the people who are here. Mr. Cutler.

STATEMENTS OF LLOYD N. CUTLER AND HOWARD P. WILLENS, ATTORNEYS, CUTLER AND PICKERING, ON BEHALF OF AMERICAN HONDA MOTOR CO., INC.; ACCOMPANIED BY DOUGLAS W. TOMS, CONSULTANT, AMERICAN HONDA MOTOR CO., INC.; MATTHEW SCHEIDER, ATTORNEY, WILKIE FARR & GALLAGHER, REPRESENTING YAMAHA; HARRY CLADOUHOS, ATTORNEY, PETTIT & MARTIN, REPRESENTING SUZUKI; AND MARK L. GERCHICK, ATTORNEY, PAUL HASTINGS, JANOFSKY & WALKER, REPRESENTING KAWASAKI

Mr. CUTLER. Thank you, Mr. Chairman. We very much appreciate this opportunity to be heard. My name is Lloyd Cutler. I am accompanied as you said, by my partner, Howard Willens and Mr. Douglas Toms, an experienced vehicle safety expert and administrator. We three appear today on behalf of American Honda Motor Company, Incorporated as well as the other three major U. S. distributors of ATV's; Kawasaki Motors Corporation, U.S.A.; U.S. Suzuki Motor Corporation; and Yamaha Motor Corporation U.S.A.

At the table with me are attorneys for those companies including Mr. Matthew Schneider of Wilkie, Farr and Gallagher, representing Yamaha; Mr. Harry Cladouhos of Pettit and Martin, representing Suzuki; Mr. Mark Gerchick of Paul, Hastings, Janofsky and Walker, representing Kawasaki.

Mr. FLORIO. Gentlemen, welcome to our committee.

Mr. CUTLER. Last December at the request of the Consumer Product Safety Commission and at the urging of several members of this subcommittee and others, the Department of Justice brought suit on behalf of the United States against the distributors of all terrain vehicles, seeking relief under section 12 of the Consumer Product Safety Act.

That suit, as has been mentioned this morning, has resulted in the filing on March 14 of the proposed Final Consent Decree with the United States District Court, under which the Government will obtain most of the relief sought by its complaint. The District Court has scheduled a hearing for April 18, at which all interested persons will have an opportunity be heard on whether the proposed final decree should be approved and entered by the court.

The ATV distributors, Mr. Chairman, are concerned that H.R. 3991 is intended to legislate the outcome of this judicial proceeding, by superseding the terms of the proposed decree negotiated by the Government and the defendants. This decree contains comprehensive and unprecedented provisions in the area of training, safety, education, notices and warning. But it does not include, as has been noted again this morning, any provision for the recall of three-wheeled ATV's now in the hands of users, nor does it require the distributors to offer refunds to those responding to the recall as the Government's complaint has requested.

It also obliges the Consumer Product Safety Commission not to institute an administrative proceeding for the purpose of recall and refund for a period of 12 months, and then only upon the basis of substantial new evidence.

H.R. 3991, however, would override these terms by requiring the Commission to issue regulations within 6 months ordering such a recall and refund. H.R. 3991 also directs the Commission to supersede the decrees provisions on the content of warnings, labels, advertising campaigns and owners manuals and on the scope and incentives of the training program about which you heard this morning, with new requirements to be issued within the next 18 months, even though according to the decree its provisions are to remain in force for 10 years.

H.R. 3991 is not a general amendment of the Consumer Product Safety Act applicable to all consumer products. It applies only to ATV's and to the defendants in the present judicial proceeding. Its obvious purpose, and I think this became clear this morning, is to override the decision that may shortly be reached in that proceeding.

In our respectful submission, H.R. 3991 is unwise, unconstitutional, and as far as we have been able to find, unprecedented. It is unwise in our view, because it would unilaterally set aside a carefully crafted litigation settlement agreement worked out by the Executive Branch and an independent administrative agency, that has been submitted to an Article III Judge for approval after a full public hearing.

Under the executive's duty to take care that the law be faithfully executed, the executive enters into hundreds and perhaps thousands of litigation settlements every year, many of them with judicial approval. The settlement process, as I think everyone would concede, is an indispensable element of effective law enforcement.

But who is going to make a litigation settlement with the Government, and particularly with this Commission, if the Government can unilaterally alter the settlement at will as H.R. 3991 would do, and retroactively increase the price of settling the case?

In our respectful submission, H.R. 3991 is also unconstitutional. In 1530 the English Parliament enacted an infamous law providing that the Bishop of Rochester's cook should be boiled in oil for allegedly putting poison in a porridge.

Mr. **Barton**. That was before I was born, I just want to the record to show.

Mr. **Cutler**. But you have seen all the films on public television of Henry VIII. The unfortunate cook was thereupon duly cooked without benefit of trial by judge or jury. This sort of trial by legislature influenced the framers to create a Government of three distinct branches, no one of which could exercise all of the powers of any of the other branches.

Also, it influenced the framers to prohibit bills of Attainder—legislative measure imposing penalties or disabilities on particular persons or classes of persons—as well as retroactive *ex post facto* laws. It also led the first Congress to propose and the States to ratify the Bill of Rights, including the Fifth Amendment provision that neither Congress nor any other branch of the Government may deprive any person of life, liberty or property without due process of law.

As Justice Stevens has observed, normally the Constitution requires Congress to proceed by general rule making rather than by deciding individual cases. To us, H.R. 3991 is a bill providing, in essence that the like the Bishop of Rochester's cook, the distributors of ATV's shall be boiled in oil without judicial trail or even administrative hearings, in short, without due process of law.

It declares that ATV's "shall be considered banned hazardous products for which a rule was promulgated under section 8" of the CPSC without any of the hearings, findings and other procedural requirements which this act and the Constitution itself guarantee before such a determination can be made.

It contrasts sharply, Mr. Chairman, with the 1974 amendments of the Highway Safety Act requiring a judicial "trial *de novo* with the burden of proof on the Government to prove by a preponderance of the evidence, that a safety related defect exists" before a manufacturers could be ordered to recall a product.

Congress expressly adopted this procedure to avoid violating what your committee then saw as "The Constitutional Right of Due Process."

Mr. **Florio.** Are you suggesting that Mr. Barton's bill is providing for recalls?

Mr. **Cutler.** We are suggesting that Mr. Barton's bill is providing for recalls and refunds, yes. If you deem something to be a banned hazardous product, I would think that is the inevitable consequence. Certainly, if that were done pursuant to hearings and findings under this Consumer Product Safety Commission Act, that would be one of the consequences.

We also think that H.R. 3991 is a constitutionally prohibited Bill of Attainder and *ex post facto* law. It singles out a particular version of a particular product made and distributed by only five companies, and decrees that those companies must refund all or part of the purchase price of sales predating the statute to customers who want refunds.

It amounts to a law, pronouncing without trial, that A shall pay damages to B. It arrogates to the legislature all the power of the executive and judicial branches to make the law, to prosecute the case and to make the judgment.

In short it is a throwback, in our submission, to the old parliamentary trial by legislature that the American Constitution forbids. It is also a throwback, we would respectively submit, to the Alice in Wonderland principle of sentence first and trial later.

We believe respectfully that H.R. 3991 also proclaims what is in effect a rule of decision for an ongoing judicial proceeding, in violation of the principle of *United States* v. *Klein*, reaffirmed in *United States* v. *Sioux Nation*, also a rule of decision for ongoing and future administrative proceedings before the Commission, in violation of the principle enunciated by Justice Powell in the *Chadha* case where Justice Powell said that Congress, by asserting the right to override Immigration Service adjudications waiving deportations in particular cases has "assumed a judicial function in violation of the separation of powers."

H.R. 3991 may also violate the Equal Protection Clause. It deprives the makers and distributors of three-wheel ATV's of procedural protections available to the makers and distributors of all other consumers products before they can be banned as unsafe. While it determines that all three-wheel ATV's forever are banned hazardous products, regardless of what technical improvements made be made in the future, it bars their sale in new or used condition only by manufacturers, distributors or dealers, but not by present owners.

It makes a special exception for the right of present owners to sell their vehicles to other people. It is present owners who now possess virtually all of the three-wheel ATV's now in existence in this country.

Finally, it is our view that H.R. 3991 may take the property of the ATV distributors for a public use, namely as you have said earlier this morning, recalls and refunds to customers designed to remove the allegedly hazardous vehicles from use without just compensation. It imposes the cost of this public use solely on the manufacturers while permitting ATV owners who are satisfied with their vehicles to sell these vehicles to new users.

The manufacturers, in our view, would therefore be entitled to file suits for just compensation against the Government under the Tucker Act, a right that they would be forced to invoke if H.R. 3991 becomes law in its present form.

For all of the above reasons, Mr. Chairman, we urge that further action on H.R. 3991 be deferred until after the very constructive Final Consent Decree agreed to by the Government and the ATV distributors is given a chance to enter into force and have its anticipated beneficial effects.

With your permission, Mr. Willens will now describe those beneficial effects to you.

[Testimony resumes on p. 157.]

[The following document was received for the record:]

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

April 14, 1988

MEMORANDUM

This memorandum addresses the constitutionality of H.R. 3991, the ATV User Safety and Equity Act. A copy of H.R. 3991 is attached hereto.

Summary

H.R. 3991 is designed to legislate a penalty against five ATV distributors without an administrative or judicial determination that they have violated any law. Its purpose is also to override a United States district court decree because, in the view of the supporters of the bill, that decree "isn't good enough." This is the very kind of "trial by legislature" that the Framers sought to avoid, both by their institutional separation of judicial from legislative power in Article III of the Constitution, and by the adoption of limitations on legislative power such as those expressed in the Bill of Attainder Clause in Article I. Such legislative acts, as well as legislative revisions of decrees entered by the Judicial Branch, are prohibited by a long line of Supreme Court decisions.

H.R. 3991 also violates the Due Process Clause of the Fifth Amendment. It "consider[s]" (contrary to fact) that ATV distributors have had their day in court under the Consumer Product Safety Act, assumes their guilt, bans the three-wheel design of their products, and orders them to pay hundreds of millions of dollars of refunds to purchasers of those designs without any evidentiary hearing whatsoever. This Alice in Wonderland principle -- "Punishment first, trial later" -- is a unique departure from the kind of trial-type procedures that the Due Process Clause requires and that have consistently been afforded by Congress in the health and safety area in the past.

For distributors of all other consumer products, the Consumer Product Safety Act precludes the imposition of such sanctions without a trial -- either by a federal court under Section 12 or by the Commission under Section 15, subject to federal judicial review. In this respect, the Act parallels many other statutory schemes, such as those governing foods and drugs, highway safety, and hazardous wastes. As the very House Committee now considering H.R. 3991 said in its report proposing the 1974 amendments to the National Highway Traffic Safety Act, such a trial is necessary to protect "the constitutional right of due process."

Moreover, to single out distributors of one particular design of one particular consumer product for the denial of these basic due process protections also raises substantial equal protection concerns. As the United States Court of Appeals for the District of Columbia Circuit held only last month, in striking down federal legislation directed at Rupert Murdoch "with the precision of a laser beam," equal protection concerns are most acute when legislation singles out one or a few "for uniquely disfavored treatment."

It may be that H.R. 3991 is premised not only upon a desire to legislate the kinds of judicial relief to ATV purchasers that would violate the separation of powers, due process, and equal protection requirements of the Constitution, but also upon the public purpose of using the funds of ATV distributors to provide incentives for purchasers to turn back their vehicles. If so, Congress cannot constitutionally implement that goal by requiring the distributors to pay for it without providing them with the just compensation required by the Takings Clause of the Fifth Amendment.

Introduction

In December 1986, the CPSC voted to request the Department of Justice to initiate an action in federal district court under Section 12 of the Consumer Product Safety Act, seeking a determination that ATVs present an imminent hazard. The government and the distributors ultimately agreed to a settlement of the ATV dispute, and a complaint and Preliminary Consent Decree were filed with the district court in December 1987.[1] The relief sought by the complaint included a halt to all sales of three-wheel ATVs, a variety of training and informational programs, and a refund for three-wheel ATVs and for four-wheel ATVs purchased for use by children under age 16. In the preliminary decree, the distributors agreed to virtually all of these demands (and others), except for the provision of refunds to past purchasers. The preliminary decree was approved and entered by the district court. The parties thereafter executed and submitted to the court a proposed final decree, which implements in greater detail the relief contemplated by the preliminary decree. The district court will approve and enter the final decree if the court determines after hearing that it "reasonably comport[s] with statutory objectives and fairness."[2]

H.R. 3991 was introduced by Representative Barton shortly after the entry of the preliminary decree. According to its author, the bill "addresses the omissions of the Decree."[3] In the view of the supporters of H.R. 3991, the decree "isn't good enough."[4] H.R. 3991 declares that three-wheel ATVs "shall be considered" to have been found by the agency to be banned hazardous products, just as if the CPSC had actually complied with all of the procedures and standards guaranteed by Sections 8 and 9 of the Act. The bill bans the sale of three-wheel ATVs only by manufacturers, distributors or dealers, and not by present owners. It requires the CPSC to issue regulations directing the distributors to pay refunds to all past purchasers of three-wheel ATVs who voluntarily return them, but permits continued use of ATVs by owners who decide that they "know the dangers and choose to keep and ride" them.[5/]

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[1] United States v. American Honda Motor Co., et al., Civil Action No. 87-3525 (D.D.C. 1987).

[2] Memorandum Opinion at 5 (March 4, 1988).

[3] Statement of Rep. Barton at 1, 4 (March 16, 1988). See also 134 Cong. Rec. H 486 (daily ed. Feb. 24, 1988) (decree "not an entirely adequate solution").

[4] Statement of Rep. Florio at 1 (March 16, 1988). See also 134 Cong. Rec. E 342 (daily ed. Feb. 24, 1988) ("settlement is woefully inadequate").

The remaining provisions of H.R. 3991 direct the CPSC to promulgate certain rules regulating all ATVs. First, it instructs the agency to issue rules requiring free operator training, protective equipment, and warning labels -- all subjects regulated in great detail by the final decree. Second, it requires the agency to issue performance and design standards for ATVs; after one year and until such rule takes effect, the agency will be "considered" to have issued a version of such standards consisting of a draft standard released (albeit in incomplete form) in January 1988. This provision also conflicts with the decree, which contemplates good faith negotiations in an effort to develop voluntary standards over a period of four months after entry of the final decree.

[5/] Statement of Rep. Barton at 2-3.

Discussion

H.R. 3991 raises a number of different constitutional problems, each of which is addressed below. The unique combination of these constitutional defects, however, is one that appears to be unprecedented. H.R. 3991 amounts to a retrial of the ATV manufacturers by a Congress displeased with the terms of a federal court decree -- a retrial in which manufacturers are "considered" to have had their day in court, and by which Congress thereafter imposes hundreds of millions of dollars in sanctions on them for the benefit of private parties, unwinding transactions long since completed.

So viewed, H.R. 3991 violates virtually every one of what Professor Tribe has characterized as the "norms of regularity" required of our representative form of government under the Constitution.[6/] Over one hundred years ago, in Hurtado v. California, 110 U.S. 516, 535-36 (1884), the Supreme Court articulated those norms in the course of defining the requirements of due process of law:

> "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but . . . 'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders

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[6/] L. Tribe, American Constitutional Law 476 (4th repr. 1982).

> judgment only after trial,' so 'that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society,' and thus excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial and arbitrary exertions of power under the forms of legislation."

H.R. 3991 is flatly inconsistent with these precepts.

I. SEPARATION OF POWERS

A. The Constitution Prohibits Trial by Legislature

Article III of the Constitution establishes that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." This separation of judicial from legislative powers was quite deliberate. In light of the "more extensive" scope of its constitutional powers and the absence of "precise limits" on them,[7] the legislature was "the branch most feared by the Framers."[8] In particular, Madison warned, "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*."[9/]

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[7] The Federalist No. 48 (J. Madison).

[8] In re Sealed Case, Nos. 87-5261 et al. (D.C. Cir. January 22, 1988), slip op. at 12, prob. juris. noted sub nom. Morrison v. Olson, 56 U.S.L.W. 3568 (U.S. Feb. 22, 1988) (No. 87-1279). See also Bowsher v. Synar, 106 S. Ct. 3181, 3189 (1986).

The Framers' separation of judicial from legislative functions was a fundamental departure from the historical role of Parliament,[10/] reflected in such infamous statutes as the one directing that the Bishop of Rochester's cook should be boiled in oil for allegedly putting poison in a porridge.[11/] Like the provisions for life tenure and undiminished compensation for federal judges, the separation of powers doctrine safeguarded the rights of litigants in this country to avoid having to undergo such a "trial by legislature,"[12/] and instead required their claims and defenses to be decided "before judges who are free from potential domination by other branches of government."[13/]

This division of authority by the Framers has been carefully maintained by the courts. In *Chadha v. INS*, 634 F.2d

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[9/] The Federalist No. 47 (J. Madison) (emphasis in original). *Accord*, *Buckley v. Valeo*, 424 U.S. 1, 120 (1976) (per curiam).

[10/] *See* *Kilbourn v. Thompson*, 103 U.S. 168, 187-89 (1881).

[11/] 22 Hen. 8, c. 9 (1530). For examples of similar Parliamentary decrees, see *Nixon v. GSA*, 433 U.S. 425, 473-74 & nn.35-37 (1977).

[12/] *INS v. Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring in the judgment).

[13/] *CFTC v. Schor*, 106 S. Ct. 3245, 3256 (1986).

408, 431 (9th Cir. 1980), then-Judge Kennedy observed that when the House of Representatives applied a legislative veto to a particular deportation case, "[t]he Legislature thus disrupt[ed] the judicial system by retaining a selective power to override individual adjudications, in lieu of changing standards prospectively by the usual, corrective device of a statutory amendment." On review, the Supreme Court affirmed, although the majority relied upon the Bicameralism and Presentment Clauses. 462 U.S. 919 (1983). Justice Powell's concurrence agreed with Judge Kennedy that in determining whether a particular person was entitled to permanent residence in this country, Congress had "assumed a judicial function in violation of the principle of separation of powers." Id. at 960.

As Justice Powell noted in Chadha, the concern that "a legislature should not be able unilaterally to impose a substantial deprivation on one person" was expressed not only in the separation of federal powers, but also in the Bill of Attainder Clause. Id. at 962. That clause was not "a narrow, technical . . . prohibition, but rather . . . an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply -- trial by legislature." United States v. Brown, 381 U.S. 437, 442 (1965). It is another reminder that "normally the Constitution requires Congress to proceed by general rulemaking rather than by deciding individual cases." Nixon v. GSA, 433 U.S. 425, 486

(1977) (Stevens, J., concurring).[14] The closely related clause of the Constitution prohibiting *ex post facto* laws reflects similar concerns about "arbitrary and potentially vindictive legislation," and "upholds the separation of powers by confining the legislature to penal decisions with prospective effect." *Weaver v. Graham*, 450 U.S. 24, 28-29 & n.10 (1981).[15]

The question here is whether H.R. 3991 violates these principles of separation of legislative and judicial power. Justice Powell noted that such violations may occur in either of two ways. Congress may "interfere impermissibly with the

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[14] To constitute a bill of attainder, a statute must impose some form of punishment, either as retribution or to prevent future misconduct. *Nixon v. GSA*, 433 U.S. 425, 475-76 & n.40 (1977).

The ban-and-refund provisions of H.R. 3991 appear to impose such a penalty. While making ATV purchasers whole, they would leave ATV distributors "holding the bag" -- paying refunds to recall vehicles that they (and they alone) would then be barred from selling. Since ATV owners are allowed not only to keep their vehicles but also to sell them to other consumers, H.R. 3991 cannot be explained as simply an attempt to prevent the use or resale of an allegedly dangerous product.

[15] The extent to which this prohibition extends beyond the criminal context is a question that the Supreme Court has not answered consistently. *Compare* *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138-39 (1810) (invalidating statute annulling land grant), *and* *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1867); *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867) (invalidating statutes disqualifying former Confederate sympathizers from certain occupations), *with* *Harisiades v. Shaughnessy*, 342 U.S. 580, 594-95 (1952) (confining application of clause to criminal penalties, or to "novel disabilities" that are "really criminal penalties for which civil form [is] a disguise"). *See generally* L. Tribe, *supra*, at 480-82 & n.30.

[judiciary's] performance of its constitutionally assigned function," or it may "assum[e] a function that more properly is entrusted" to the judicial branch.[16] In H.R. 3991, Congress would do both.

B. H.R. 3991 Assumes Classic Judicial Functions

The ban-and-refund provisions of H.R. 3991 certainly "assume a function" that is traditionally judicial in nature. H.R. 3991 "consider[s]" these particular consumer products to be hazardous and then -- like the legislative veto in the deportation case struck down in _Chadha_ -- awards relief against specific parties as a result of those constructive findings. And it does so here by unwinding past transactions. Congress itself has recognized the inherently judicial nature of these precise questions. Under the Consumer Product Safety Act, it provided for such retroactive refunds only after the opportunity for a trial before a United States district court under Section 12, or after an analogous trial-type hearing before the CPSC under Section 15, leading to an agency order reviewable in court.[17]

16/ _INS v. Chadha_, 462 U.S. 919, 963 (1983) (Powell, J., concurring in the judgment). _Accord_, _Ameron, Inc. v. United States Army Corps of Engineers_, 809 F.2d 979, 989 (3d Cir. 1986), _cert. granted_, 56 U.S.L.W. 3638 (U.S. Mar. 21, 1988) (No. 87-163).

17/ Administrative agencies can constitutionally perform such adjudicative functions only as an "adjunct" to a reviewing Article III court. _Northern Pipeline Co. v. Marathon Pipe Line Co._, 458 U.S. 50, 77-79, 84-86 (1982) (plurality opinion). _See also_ _Atlas Roofing Co. v. OSHA_, 430 U.S. 442, 455 n.13 (1977); _Crowell v. Benson_, 285 U.S. 22 (1932).

Maintaining this distinction between "general rules" prescribed by the legislative branch and "the application of those rules to individuals in society" by the judiciary (or by trial-type adjudicatory actions of administrative agencies subject to judicial review)[18] is critical to the principles underlying the separation of powers. Only last month, the D.C. Circuit applied very similar principles in striking down a provision in the 1988 appropriations legislation that forbade the FCC from extending temporary waivers of its newspaper-broadcast cross-ownership rules. *News America Publishing, Inc. v. FCC*, No. 88-1037 (D.C. Cir. March 29, 1988). That legislation was applicable only to, and found to have been directed solely at, the particular factual situation involving Rupert Murdoch.[19] It "str[uck] at Murdoch with the precision of a laser beam,"[20] to bar the agency from entertaining a classic adjudicative issue: whether the particular circumstances in Mr. Murdoch's case entitled him to a continued waiver of the Commission's rules.

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[18] *See Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810).

[19] The court quoted statements from the sponsors of the legislation that "'[t]he agency had been captured lock, stock, and barrel by Rupert Murdoch, and *it was long past time for Congress to step in*'" to his case. Slip op. at 17 (emphasis supplied).

[20] Slip op. at 29.

While accepting the view that "broadcast regulations receive more lenient scrutiny than ones affecting other types of speech," the *News America* court concluded that application of the law only to Mr. Murdoch's particular case was a device that bore "only the most strained relationship to the purpose hypothesized." Slip op. at 23, 31. The court invalidated that law on equal protection grounds, but it also observed that such an "exclusive focus on a single party clearly implicates values similar to those behind the constitutional proscription of Bills of Attainder." *Id*. at 28. This concern has special force in the case of H.R. 3991, which imposes retroactive legislative relief upon alien-owned firms with less extensive rights of participation in the political process.[21]

C. H.R. 3991 Interferes with Pending Judicial Proceedings

H.R. 3991 also interferes with the functions of the federal courts in ongoing judicial proceedings. From the very beginning of our republic, it has been clear that "no decision of any court of the United States can, under any circumstances . . . agreeable to the Constitution, be liable to a revision, or even suspension, by the Legislature itself, in whom no judicial power of any kind appears to be vested, but the important one relative to impeachments." Hayburn's Case, 2 U.S. (2 Dall.) 409, 413 (1792).[22]

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[21] *Cf*. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938); *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 102 (1976).

In Benoni v. Boston and Maine Corp., 828 F.2d 52, 55 (1st Cir. 1987), for example, an employee who had unsuccessfully challenged his discharge in federal court thereafter obtained enactment of a private bill in Congress, directing the court to disregard the res judicata effect of the prior decision and to "consider any alleged fraud or corruption" by the arbitration panel that had upheld his discharge. Citing Hayburn's Case, the First Circuit found that such a statute "bristles with constitutional issues related to the separation of powers doctrine, and the equal protection and due process clauses." Id. at 56.[23]

The pendency here of federal court litigation requesting relief virtually identical to that sought by H.R. 3991 makes the "potential for disruption"[24] of the judicial function particularly serious. In the leading case of United States v. Klein, 80 U.S. (13 Wall.) 128 (1872), a property owner had recovered a judgment in the Court of Claims for the proceeds of the sale of his property during the Civil War, by proof of loyalty based upon a presidential pardon. Soon thereafter, Congress passed a law declaring that no such pardon should be admissible as evidence of loyalty, that such a pardon should be conclusive evidence of disloyalty, and that any claim based upon such a pardon should be dismissed "for want of jurisdiction." The Supreme Court held that in prescribing the result in a pending case, "Congress has inadvertently passed the limit which separates the legislative from the judicial power." Id. at 146-47. See also United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

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[22] See also 2 U.S. at 410, 411. Accord, United States v. Ferreira, 54 U.S. (13 How.) 40, 49-53 (1852).

[23] In the light of these significant constitutional problems, the First Circuit construed the private bill not to cover the particular claim at issue.

[24] Nixon v. GSA, 433 U.S. 425, 443 (1977).

H.R. 3991 is essentially no different from the statute invalidated in Klein. Although in form it does not purport to require modification of a particular court decree, in effect it would invalidate most or all of a court decree by requiring the CPSC to issue orders or rules inconsistent with that decree. Indeed, its expressed purpose is to remedy what its proponents perceive to be the "[in]adequate solution" of a decree that "isn't good enough." H.R. 3991 imposes refund requirements that the decree does not. While H.R. 3991 imposes a total ban on sales of three-wheel ATVs, the decree's "stop-sale" provision would permit such sales to resume in the event that safety standards acceptable to the CPSC permitted them in the future. While H.R. 3991 requires the agency to issue rules prescribing training and information for ATV purchasers, the decree already contains its own detailed series of such requirements, developed over the course of months of negotiations. Finally, while H.R. 3991 imposes mandatory performance and design standards, the decree commits the parties to attempt in good faith to reach agreement on voluntary standards within four months.[25]

Nor is this H.R. 3991's only threatened disruption to federal judicial proceedings. It would also provide the plaintiffs with relief now sought in three private class actions brought in federal court on behalf of all current owners of three-wheel ATVs.[26] In those class actions, the plaintiffs allege that three-wheel ATVs are "dangerous and hazardous." They seek recovery of both compensatory and punitive damages from ATV distributors for alleged misrepresentations under common law fraud, breach of warranty, and other theories -- including a request to "vitiate the sale and return monies" to the purchasers.[27/] The pendency of such private litigation would not disable Congress from passing general safety or consumer protection legislation providing remedies for misrepresentation. But legislation designed specifically to decide the matters at issue in these pending lawsuits without affording the "losing" party its day in court "interfere[s] impermissibly" with classic judicial functions reserved by Article III to the federal courts.

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[25] H.R. 3991 is thus far more suspect than the kind of "court-stripping" proposal for divesting Judge Greene of consent decree jurisdiction over AT&T and the Bell Operating Companies that was sponsored in 1986 by Senator Dole. Unlike the Dole bill, H.R. 3991 effectively revises the substantive provisions of a judicial decree. Cf. 132 Cong. Rec. S 7750 (June 18, 1986) (constitutionality of Dole bill). Though the Dole bill would merely have transferred administration of the decree from the court to the FCC, many viewed that proposal as "a patent violation of long settled principles of separation of powers." Federal Telecommunications Policy Act of 1986: Hearings Before the Senate Comm. on Commerce, Science, and Transportation, 99th Cong., 2d Sess. 126 (1986); see id. at 132, 140, 147, 239, 259-60, 278-79, 310, 313.

[26] Reinheimer v. American Honda Motor Co., Civil Action No. 88-0237 (E.D. Pa. filed Jan. 13, 1988); Clark v. American Honda Motor Co., Civil Action No. 88-1027 (E.D. Pa. filed Feb. 9, 1988); Boothe v. American Honda Motor Co., Civil Action No. 88-1914 (E.D. Pa. filed Mar. 4, 1988).

In this case, the power exercised by H.R. 3991 is uniquely judicial in nature, because it not only bans particular designs of particular products as hazardous, but also reaches back to undo the effects of specific transactions in those products. We are aware of no prior law enacted by Congress that operates to readjust the legal rights and obligations of particular parties in this fashion.[28/] Quite the contrary. In the Portal to Portal Act of 1947, Congress acted to reduce the time period for calculating working hours under the Fair Labor Standards Act. In doing so, however, Congress declined to adopt the approach taken by H.R. 3991. Although reducing the overtime

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[27/] Complaint ¶ 34 (Clark).

[28/] Of course, there are many legislative schemes that create new statutory rights or obligations, and that establish administrative agencies *prospectively* to resolve factual disputes that arise thereunder. As noted above, even in these cases those agency factfinders serve only as "adjuncts" to reviewing Article III courts.

obligations of all employees to all employers, the Portal to Portal Act was sustained against an Article III challenge because it did not usurp judicial functions of fashioning remedies for particular cases. As the Second Circuit held, it "did not attempt to change [judicial decisions] in any way," and "[i]t did not require repayment of any money paid in reliance upon" existing law. Battaglia v. General Motors Corp., 169 F.2d 254, 262 (2d Cir.), cert. denied, 335 U.S. 887 (1948). In this respect, H.R. 3991 is unprecedented.

Finally, it is appropriate to "consider historical practice in determining whether a branch's particular exercise of power comports with the Constitution."[29] In 1937, the Attorney General held hearings on the deportability of labor leader Harry Bridges and determined that there was no basis for deportation. Congress thereafter introduced a bill directing him to deport Bridges. H.R. 9766, 76th Cong. 3d Sess. (1940). Opposing the bill, Attorney General Jackson asserted that if passed "it would be an historical departure from an unbroken American practice and tradition":

> "How shall we teach this respect [for our processes and tradition] if the Government itself will not abide by a decision in an individual case, and makes acts whose nature is not specified, but which must have been lawful when done, the basis for deportation without hearing?"[30]

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[29] In re Benny, 812 F.2d 1133, 1141 (9th Cir. 1987).

[30] S. Rep. No. 2031, 76th Cong., 3d Sess. 9-10 (1940).

After a flood of criticism citing bill of attainder, due process, and other constitutional problems,[31] the Senate twice declined to act on the bill. See 92 Cong. Rec. A3125 (1947).[32] H.R. 3991 poses these very same problems.

II. THE DUE PROCESS CLAUSE

H.R. 3991 provides that three-wheel ATVs "shall be considered to be hazardous consumer products under Section 8" of the Consumer Product Safety Act, even though none of the procedural prerequisites to such a finding under the Act has been met, and then imposes hundred of millions of dollars in refunds without any opportunity for consideration of whether other relief (such as the kind that the decree requires) is adequate. Even if Congress could provide such a legislative resolution of the ATV dispute without violating the limitations imposed by the Bill of Attainder Clause of Article I, or the assignment of the judicial power to the Judicial Branch in Article III and the doctrine of separation of powers, the deprivation of any opportunity for a trial-type hearing under H.R. 3991 raises serious due process questions under the Fifth Amendment.

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[31] See id. at 2-9; 86 Cong. Rec. 8183-212 (1940).

[32] Similar problems surround the provision of the pending foreign trade bill that would prohibit "the Toshiba Corporation and Kongsberg Vaapenfabrik" from obtaining government contracts with or selling their products in the United States for a specified period of years. H.R. 3, 100th Cong., 1st Sess. § 1031 (1987) (as amended and passed by the Senate on July 21, 1987). See editorial criticizing this provision in The Washington Post, April 4, 1988, at A16:

> "It's retroactive legislation and constitutionally suspect. It's up to the courts, not Congress, to go after transgressors."

In the case of Toshiba and Kongsberg, at least, the companies had already been found guilty by the courts of their own nations of violating national export control laws.

It is fundamental to the concept of due process that a person cannot be deprived of property without adequate notice and an opportunity to defend himself at a hearing. Indeed, "one of the cornerstones of the common law was the principle that no person ought to be condemned unless he appeared personally before a court."[33/] For these reasons, the Due Process clause "cannot be so construed as to leave congress free to make any process 'due process of law,' by its mere will."[34/]

33/ Jurow, Untimely Thoughts: A Reconsideration of the Origins of Due Process of Law, 19 Amer. J. Leg. Hist. 265, 277 n.39 (1975). As Chief Justice Warren observed, this principle has far more "ancient roots":

> "It is not the manner of the Romans to deliver any man to die, before that he which is accused have accusers face to face, and have licence to answer for himself concerning the crime laid against him."

Acts 25:16, quoted in Greene v. McElroy, 360 U.S. 474, 496 n.25 (1959) (invalidating revocation of security clearance without an adjudicatory hearing that includes the rights of confrontation and cross-examination).

34/ Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272, 276 (1856).

Laws need not provide every person with an opportunity to be heard before making a legislative decision "in which all are equally concerned."[35] But "as government focuses its attention on specific individuals and imposes burdens on them, it must necessarily afford those individuals some opportunity to participate in a meaningful manner."[36] Thus, in Londoner v. City of Denver, 210 U.S. 373 (1908), a city council, sitting as a board of equalization,[37] assessed the costs of paving a particular street against particular landowners without affording them anything more than the right to file written objections. The Supreme Court held that in such a specific case the Due Process Clause requires "something more than that" -- an opportunity for a hearing at which those affected can submit proof and present argument. Id. at 386.[38] Since that time, Londoner has become the foundation for the requirement of trial-type procedures where government action is addressed to "adjudicative" facts -- facts concerning the business or conduct of particular parties.[39]

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[35] Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915).

[36] Maine Central R.R. v. Brotherhood of Maintenance of Way Employes, 657 F. Supp. 971, 983 (D. Me. 1987).

[37] The federal constitutional doctrine of separation of powers does not apply to the states. Thus, Londoner is peculiarly instructive as to the independent role of due process apart from the requirements of Article III.

[38] See also Alaska Airlines, Inc. v. Civil Aeronautics Board, 545 F.2d 194, 200 (D.C. Cir. 1976).

[39] United States v. Florida E. Coast Ry., 410 U.S. 224, 244-45 (1973). See generally 2 K. Davis, Administrative Law Treatise § 12.2, at 411-12 (1979).

In H.R. 3991, as in Londoner, "[a] relatively small number of persons [are] concerned, who [are] exceptionally affected, in each case upon individual grounds."[40] If H.R. 3991 becomes law, three-wheel ATVs of any kind will become banned hazardous products and the five distributors of these vehicles will be subjected to hundreds of millions of dollars in refunds that would seriously disrupt their continued operations. Those companies have a constitutional right to an evidentiary hearing by a fact-finding tribunal on these matters before such a deprivation can be inflicted upon them.[41]

These due process requirements have particular force where government contemplates action that will have retroactive effect, rather than merely regulating or banning future conduct. In his landmark analysis,[42] Judge Friendly observed that this distinction can be traced to Article 39 of Magna Carta, "often seen as the origin of the concept of due process," which was addressed to "the king's going out or sending against a free man, not of his refusing a [subject's] request" for the award of a license or other privilege.[43] RR Village Ass'n, Inc. v. Denver

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[40] Bi-Metallic Inv. Co., supra, 239 U.S. at 446. See also Scott v. Greenville County, 716 F.2d 1409 (4th Cir. 1983).

[41] See Thompson v. Washington, 497 F.2d 626, 638 n.42 (D.C. Cir. 1973).

[42] Friendly, Some Kind of Hearing, 123 Univ. Pa. L. Rev. 1267, 1295 (1975).

[43] Id. at 1295-96. Thus, "[r]evocation of a license is far more serious than denial of an application for one . . . ."

[Footnote continued next page]

Sewer Corp., 826 F.2d 1197, 1201 (2d Cir. 1987), for example, after upholding a future rate increase imposed by the Town Board, held that property owners "were entitled to notice and an opportunity to be heard before the Town could properly approve a retroactive rate increase."[44/]

These principles of procedural due process have been fully recognized in previous legislation regulating consumer product safety, and a wide variety of other regulatory schemes established by Congress in the health and safety area. As noted above, in enacting the Consumer Product Safety Act, Congress itself provided that determinations of the kind made in H.R. 3991 are subject to adjudicative procedures that meet due process standards. Refunds for hazardous consumer products are permitted only after the opportunity for a trial before a United States district court under Section 12 of the Act, 15 U.S.C. § 2061, or after an analogous trial-type hearing before the Consumer Product Safety Commission under Section 15 of the Act, 15 U.S.C. § 2064.

[Footnote continued from preceding page]

Id. at 1296. See also Bell v. Burson, 402 U.S. 535, 539 (1971) (constitutionally significant difference between denying a benefit in the first place, i.e., denying driver's licenses to those without insurance, and taking a benefit away, i.e., suspending a license).

[44/] See also Ohio Bell Tel. Co. v. Public Util. Comm'n, 301 U.S. 292 (1937) (retroactive refund order without hearing violated due process); National Small Shipments Traffic Conference, Inc. v. ICC, 725 F.2d 1442, 1447-48 (D.C. Cir. 1984).

Similarly, when misbranded articles are seized under the Federal Food, Drug, and Cosmetic Act, the responsible agency must bring an in rem judicial proceeding, in which "the owner has an opportunity to appear as a claimant and to have a full hearing before the court."[45] And in proposing what became the 1974 amendments to the Highway Safety Act, the House Committee on Interstate and Foreign Comerce (before whose successor H.R. 3991 is now pending) required a "trial de novo with the burden of proof on the Government to prove, by a preponderance of the evidence, that a safety-related defect . . . exists" before a manufacturer could be ordered to recall a product. The Committee expressly adopted this procedure to avoid violating what it then saw as "the constitutional right of due process."[46]

More recently, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund") provided that before a party can be required to pay either clean-up costs or damages, it is entitled to a trial in federal district court as to whether its waste was disposed at the site, and whether substances that made its waste hazardous were present there.[47] In such judicial proceedings, a Superfund defendant is also entitled to assert statutory[48/] and equitable defenses,[49/] to have relief apportioned among other responsible parties on a reasonable basis,[50/] and to demonstrate that the costs incurred in cleaning up the site are inconsistent with the National Contingency Plan.[51/]

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[45] Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 598 (1950) (relying on these safeguards to reject a due process challenge to the Act).

[46] H.R. Rep. No. 1191, 93d Cong., 2d Sess. 17 (1974).

[47] See 42 U.S.C. §§ 9606, 9607, 9612; United States v. Wade, 577 F. Supp. 1326, 1332-33 (E.D. Pa. 1983).

H.R. 3991 would be a unique and unconstitutional departure from these principles.

III. EQUAL PROTECTION

Where economic legislation is scrutinized for equal protection problems,[52/] courts are ordinarily most deferential to congressional judgments as why particular classes of persons are included or excluded. So long as "fundamental rights" are not

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[48/] A defendant is not liable if it can establish that a release was caused solely by an act of God, act of war, or act or omission of a third party. 42 U.S.C. § 9607(b).

[49/] See United States v. Dickerson, 640 F. Supp. 448, 451 (D. Md. 1986); United States v. Conservation Chemical Co., 619 F. Supp. 162, 204-06 (W.D. Mo. 1985).

[50/] See United States v. Dickerson, 640 F. Supp. at 450; United States v. Ottati & Goss, Inc., 630 F. Supp. 1361, 1395 (D.N.H. 1985).

[51/] 42 U.S.C. § 9607(a)(4)(A). See United States v. Northeastern Pharmaceutical & Chemical Co., 810 F.2d 726, 747 (8th Cir. 1985), cert. denied, 108 S. Ct. 146 (1987); United States v. Ottati & Goss, Inc., 630 F. Supp. at 1395.

[52/] The Due Process Clause of the Fifth Amendment includes a guarantee of equal protection under the law. Bolling v. Sharpe, 347 U.S. 497, 499-500 (1954).

involved and the legislation does not proceed along "suspect lines," all that is necessary is that the classifications that are made bear some rational relationship to the objective that is sought. Nonetheless, "the classification must be reasonable, . . . having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."53/

Here, H.R. 3991 imposes draconian sanctions, without hearing, only on the distributors of one design (three-wheel) of one product, maintaining for all others the procedural protections guaranteed under the Consumer Product Safety Act. Similarly underinclusive legislative schemes have been struck down on equal protection grounds.54/ The rationale here is analogous to the reasons for requiring an independent judiciary to find the pertinent facts in a specific case:

> "[T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were

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53/ Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

54/ See, e.g., Jimenez v. Weinberger, 417 U.S. 628, 637 (1974); U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973).

> affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."[55]

Just last month, the United States Court of Appeals for the District of Columbia Circuit cited this principle in striking down the "Murdoch" legislation described above.[56] As the court held, "[t]he safeguards of a pluralistic political system are often absent when the legislature zeroes in on a smaller class of citizens."[57] Thus, it cautioned, "[n]owhere are the protections of the Equal Protection Clause more critical" than in situations of this kind.[58] For similar reasons, quite apart from whether H.R. 3991 rationally addresses a safety concern,[59] its specific goal of withdrawing from ATV distributors due process protections that continue to be afforded to others under the Act is particularly suspect.

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[55] Railway Express Agency, Inc. v. New York, 336 U.S. 106, 112-13 (1949) (Jackson, J., concurring).

[56] News America Publishing, Inc. v. FCC, No. 88-1037, slip op. at 28-29 (D.C. Cir. Mar. 29, 1988).

[57] Id. at 28 (citing Railway Express).

[58] Id. at 29.

[59] While H.R. 3991 would ban the future sale of all new or used three-wheel ATVs by the distributors, it would not bar continuing use or resale by present owners to other continuing users.

IV. THE TAKINGS CLAUSE

The ban-and-refund provisions of H.R. 3991 operate to require the distributors to make refunds to those purchasers of three-wheel ATVs who elect to return them. By thus confiscating proceeds of their prior sales, H.R. 3991 also appears to conflict with the Fifth Amendment's guarantee that "private property [shall not] be taken for public use, without just compensation." As the Supreme Court observed in Armstrong v. United States, 364 U.S. 40, 49 (1960), the Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Absent an award of just compensation under the Tucker Act, 28 U.S.C. § 1491, such a taking would be unconstitutional.

Because H.R. 3991 attempts to serve as both an ATV "Safety" and an ATV "Equity" Act, its precise legislative goal is not clear. If it is designed to provide a private retroactive remedy to ATV owners on some theory of misrepresentation by manufacturers, it runs afoul of the constitutional provisions discussed above. H.R. 3991 may, however, be viewed instead as a new program for reducing the risk of three-wheel accidents by means of a financial incentive to existing owners to turn in their vehicles. That may be an appropriate subject for regulation under the Commerce Clause. But as Justice Holmes held long ago, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."[60]

The Supreme Court has generally "been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action" constitute a compensable taking.[61] But it has identified a number of benchmarks alongside which the ban-and-refund provision of H.R. 3991 can be measured: the "character of the governmental action," its "economic impact . . . on the claimant," and its interference with "distinct investment-backed expectations."[62] All of these factors suggest that the peculiar sanctions of H.R. 3991 constitute a compensable taking.

The "character of the governmental action" contemplated by H.R. 3991 offends the principles of fairness underlying the Takings Clause. If Congress acts in a manner consistent with the due process and equal protection clauses and the separation of powers, it may ban the future manufacture, use, or sale of a product or substance that it rationally declares to be a threat

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60/ Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922).

61/ Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978).

62/ Id.

to public health or safety, even though the effect of such legislation is to diminish or even destroy the value of property (e.g., production facilities and unsold stock).[63] In such cases, the Court has found "no appropriation of private property, but merely a lessening of value due to a permissible restriction imposed upon its [future] use." Jacob Ruppert Corp. v. Caffey, 251 U.S. 264, 303 (1920). H.R. 3991, however, goes far beyond a mere ban on future sales of three-wheel ATVs, where the chips are left to fall where they may. It would confiscate hundreds of millions of dollars realized in past sales, in an effort devised by the state to induce the owners to stop using their vehicles.

The Supreme Court has assessed the character of the government action under the Takings Clause by analyzing what the owner has left of his property after the regulation takes effect. As it noted in Andrus v. Allard, 444 U.S. 51, 65-66 (1979), when the owner possesses a full "bundle" of property rights, prospectively destroying one "strand" in the bundle (there, the right to sell the property) is not a taking. On the other hand, a "permanent physical occupation" of the property (even one so minor as the installation of cable television facilities) constitutes a compensable taking. In that situation, the government "does not simply take a single 'strand' from the 'bundle' of property rights: it chops through the bundle, taking a slice of every strand." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 (1982).

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[63] See Andrus v. Allard, 444 U.S. 51 (1979) (ban on sale of avian artifacts); Mugler v. Kansas, 123 U.S. 623 (1887) (prohibition on manufacture and sale of intoxicating liquor); Miller v. Schoene, 276 U.S. 272 (1928) (destruction of a stand of cedar trees to eradicate a pest harmless to cedar trees but that threatened a nearby apple orchard).

H.R. 3991 does not take a strand or a slice; it confiscates the entire bundle. It not only makes the distributors' stocks unusable in their hands, but also requires them to part irrevocably with hundreds of millions of dollars, in order to finance the government's program of getting the vehicles off the road. There can be no more classic form of expropriation of a person's property.

Imposing such an enormous economic impact solely on the distributors is also probative evidence of a taking. H.R. 3991 affords no "reciprocity of advantage."[64/] Purchasers receive refunds, while distributors pay for vehicles that they cannot resell. The distributors do not receive any collateral benefits from the government's new program. When land use regulation "denies an owner economically viable use of his land," it has been held to be compensable under the Takings Clause. Agins v. City of Tiberon, 447 U.S. 255, 260 (1980). H.R. 3991 is completely confiscatory in this sense.

[64/] Nollan v. California Coastal Comm'n, 107 S. Ct. 3141, 3158 (1987) (Brennan, J., dissenting), quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922).

An additional factor that may be dispositive, as in Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005 (1984), is the extent of H.R. 3991's interference with distinct "investment-backed expectations." In that case, the Court recognized that a taking would arise if trade secret data provided to the government were disclosed to third parties, since the governing statute in effect when the data was confided to the government gave Monsanto explicit assurance of nondisclosure of such data. Id. at 1011. The landmark case of Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), was premised on essentially similar principles. In that case, the Supreme Court struck down a Pennsylvania statute prohibiting removal of coal so as to endanger nearby structures, at least as applied to mineral owners who had already contractually "reserved" from surface owners the privilege of removal. Justice Holmes held that government may not undo the effect of past private bargains when by making them "commercially impracticable [the statute] has very nearly the same effect . . . as appropriating or destroying" them. Id. at 414.

The ATV distributors similarily formed "investment-backed expectations" that, when they entered into their past contracts for sales of ATVs, those contracts would be governed by comprehensive pre-existing state and federal laws and procedures relating to product safety. Where such expectations exist and have been fostered by a detailed existing legal scheme that purports to cover the waterfront, legislation that singles out a small subset of the regulated industry and retroactively destroys its past bargains for a new public purpose is suspect -- not only under the constitutional provisions described above, but also under the Takings Clause.

In its recent decision in Nollan v. California Coastal Comm'n, 107 S. Ct. 3141 (1987), the Supreme Court has required increased scrutiny of whether a government regulation restricting the use or value of private property is in fact tailored to an identifiable public purpose that is permitted under its regulatory powers. In that case, the Court refused to allow the imposition of a condition on a building permit, without compensation, where the condition "utterly fails to further the end advanced" of public access to beaches:

> "When that essential nexus is eliminated, the situation becomes the same as if California law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute $100 to the state treasury." Id. at 3148.

Similarly, Congress should not be allowed to use a purported excuse of remedying any past harms (which prior law clearly did) as cover for funding its new scheme of encouraging voluntary relinquishment of ATVs by owners otherwise free to keep, drive and sell them.

Conclusion

H.R. 3991 presents a unique and unprecedented alignment of constitutional infirmities. By usurping the judicial function to mete out legislative punishment to the ATV distributors, and by legislating the result of an ongoing judicial proceeding, it violates Article III and the separation of powers, as well as the Bill of Attainder Clause. By doing so without providing the distributors with the right to an evidentiary hearing afforded to all other similarly situated persons covered by the Act, it ignores basic requirements of due process and equal protection. Finally, by confiscating the proceeds of past sales in order to encourage purchasers to turn in their vehicles at the same time that it permits them to ride or even sell those vehicles, it amounts to a taking for which the Fifth Amendment would require the payment of just compensation.

STATEMENT OF HOWARD P. WILLENS

Mr. WILLENS. Thank you, Mr. Chairman and members of the subcommittee. I am a partner in the law firm of Wilmer, Cutler and Pickering and, as my partner indicated, we are appearing here today on behalf of all four of the ATV distributors. I would like to do the following in my testimony: First, I would like to summarize the provisions of the Final Consent Decree. Second, I would like to outline the distributors' reasons for entering into this settlement. Third, I would like to comment briefly without any duplication upon the subcommittee's consideration of H.R. 3991.

As Mr. Cutler indicated, the proposed Final Consent Decree is now pending before Judge Gesell in the U. S. District Court for the District of Columbia. Pursuant to an order that the Judge issued a few weeks ago, all of the critics of the Final Consent Decree who have evidenced interest to participate as friends of the court, will have an opportunity to submit their views to the court for his consideration and to participate in an oral hearing set for April 18.

Many of the parties that have appeared before this panel today and in earlier hearings have already filed comments with the court, expressing their dissatisfaction with the Final Consent Decree. We, of course, have urged the court to approve the Final Consent Decree as being fair, reasonable, and in the public interest.

With the subcommittee's interest, I would like to make as part of the record, a copy of the brief that was filed on Monday with the District Court, setting forth in detail, in argument form why we think this decree should be approved by the Court.

We recognize that the subcommittee has not had an opportunity to look carefully at the provisions of the Final Consent Decree which is certainly long and detailed. When you do so, we would hope that you would look carefully at the extent to which the relief sought in the complaint filed by the Department of Justice is fairly met with the provisions of the preliminary and the Final Consent Decrees.

A chart comparing the relief sought by the complaint and then provided in the preliminary and Final Consent Decrees is set forth in Appendix A to our brief. It demonstrates that, with only a single exception that I will address later, this settlement responds to all the concerns that prompted the filing of this lawsuit.

Let me be more specific. First, the Final Consent Decree requires the distributors to set up a free nationwide hands-on training program for all consumers who purchased ATV's since December 30, 1986. In order to encourage new ATV purchasers to take this day long training course, the distributors have agreed to offer a financial incentive in the form of $100 Saving bond; $50 in cash; or, a valuable merchandise certificate at the option of the individual purchaser.

Second, the parties have agreed upon the format and language for revised labels and supplements to the owner's manuals. These are to be mailed to all known past purchasers, and a newly designed owners manual for future use is to be developed in accordance with guidelines set forth in the decree.

Third, the parties agreed to new age recommendations and a variety of actions to make certain that parents and dealers are aware of these recommendations.

Fourth, the distributors have already halted all sales of new three-wheel ATV's and have offered to repurchase or give reasonable adjustments for the three-wheel vehicles in the inventories of their dealers.

Lastly, the Final Consent Decree establishes the scope and content of an $8.5 million public awareness campaign. This campaign will seek to communicate important ATV safety messages to current owners and prospective purchasers through nationwide broadcasts and magazine media. In addition, the Consent Decree includes a set of detailed guidelines with respect to future ATV advertising.

The sheer length and weight of the Final Consent Decree, a copy of which I have in front of me, confirm its scope and detail. Each of the subjects that I have identified is addressed in excruciating detail. Frankly, much more than we and our clients think was necessary.

Based upon the provisions of this 154 page document, the CPSC will be regulating the ATV industry to an unprecedented extent, even to the point of assuring that folding stools, clipboards, and pencils will be made available to ATV users taking the training course.

Compliance with such a comprehensive set of rules will be difficult, but our clients are committed to full compliance. The CPSC and the Department of Justice have found those compliance efforts to date and those of their dealers to be very impressive.

The actions called for in this proposed settlement are far from cheap. Although precise calculations are not available at this time, we estimate the cost involved in implementing the Final Consent Decree to be in excess of $100 million.

The training course alone will cost tens of millions of dollars in light of the administrative structure that you heard described this morning, in light of the financial incentives provided to the training instructors, and in light of the unprecedented inducements to new purchasers to take the course.

Our clients have agreed to this comprehensive and unprecedented settlement, even though we believe it is very unlikely that any court would or could have ordered relief of the scope embraced by this decree if the section 12 case had been litigated.

Frankly, we and our clients had to think long and hard before settling this case on these terms. The training program for example is without precedent. No private industry has ever agreed to provide, and no court has ever ordered, not only free training to the users of a product but also financial incentives to encourage users to take such training.

Now you say—why then, Mr. Willens, did your client settle this case? Too often when parties settle lawsuits it is viewed as a sign of weakness. That is not the case here. The distributors maintain firmly that the vehicles they sell are not defective in any respect. They deny that they have made any false or deceptive representations regarding the product.

They deny that they have failed to provide adequate warnings or instructions. To the contrary and particularly to the contrary of what you have heard repeatedly here today, these distributors believe that their ATV's are safe, quality products when properly operated.

In evaluating those statements that I just made, the subcommittee, we suggest, should consider the following: No where in the 11,000 or 12,000 or 14,000 pages of the CPSC Task Force report did the CPSC Task Force consisting of highly trained civil servants, conclude that ATV's were imminently hazardous consumer products or recommend that there be a recall or repurchase of the vehicles.

Second, the Task Force report conscientiously after 18 months, recognized the limitations of their own study, pointing out that the report's recommendations do not necessarily mean that there is substantial evidence available at this time to support any such recommendation. We have heard nothing here today or since the filing of that Task Force report in September of 1986 to add one fact on top of that CPSC Task Force report that would lead to a different conclusion.

Third, the CPSC's own staff report concluded that most ATV-related injuries were not due to the vehicle, but rather to operator error. The members of this committee want to dismiss that as irrelevant. We suggest that it is not irrelevant. The statistics developed by the CPSC itself, and confirmed by independent analysis, demonstrate that most—indeed the overwhelming majority—of all ATV related accidents occur when the operators are riding under the influence of drugs or alcohol, when the vehicles are being used on paved surfaces although the manuals for years have said that is not to be done, or when the vehicles are carrying passengers which the manuals and labels for years have said should not be done, or when the riders are taking other conduct in violation of the warnings that all distributors have communicated to their purchasers and customers over the years.

Fourth, the Commission's own fragmentary data were confirmed by more extensive work done by industry experts, and have indicated that the risk of injury associated with the use of ATV's is no greater than the risk associated with many other comparable recreation products or activities.

Again, we have heard some comment about that today. Isn't it fair for us to ask this committee to consider comparable data with respect to dirt bikes, skiing, swimming pools, and other kinds of activities before this committee singles out the product of a single industry which is, in fact, no more dangerous to users than a wide range of other recreational products? We think the question is a fair one, and we hope this committee will consider all the available data, including that supplied by the Commission's own staff concluding in effect these all terrain vehicles were not more dangerous than comparable recreational vehicles.

Lastly, in evaluating our position here today, we hope the committee will take into account the fact that juries around the countries have looked at these problems in detail in the context of specific product liability cases prompted by accidents that we all regret of the kind that were described here today, and the juries have overwhelmingly concluded that the product does not suffer from any defect in design, manufacture or warning.

In the absence of an acceptable settlement of this section 12 case, it is our position that there would have had to be a protracted and complicated lawsuit. What was recognized by our clients, the distributors, and we believe by the Department of Justice itself but not the critics of this Consent Decree, is that the outcome of any such litigation would have been uncertain.

Based on the testimony here today, it seems to be the general assumption that the Government had a lay down case. All they had to do was sue and the distributors would have lost. That is not our view. We are confident we would have won.

Indeed, the distributors are prepared to litigate the engineering, statistical, epidemiological and other issues in the several class action suits that have been recently filed against them seeking recall or repurchase of ATV's in the hands of consumers.

Our clients decided to settle this lawsuit in order to avoid the cost and uncertainties associated with such litigation. Each of our clients is a responsible and respected company that takes great care to provide safe, usable, and enjoyable products. Each values its reputation for selling quality products. Each company would rather devote its talent and resources to the development and marketing of its products rather than to lengthy and risky litigation.

Settlement of this lawsuit will enable the ATV distributors to continue their efforts to encourage the safe use of ATV's. When the number of vehicles is taken into account, the rate of ATV related injury has declined by 37 percent in the last 3 years. We are pleased by the recent recognition of this fact by the CPSC in its prediction that continued reductions in the injury rate can be expected, perhaps in the range of 50 percent by 1992.

The ATV distributors are confident that their past safety related efforts have contributed to this success and are optimistic that the actions provided for in this settlement will have a similar positive effect.

Like all settlements, this decree represents a compromise between the parties. The ATV distributors would not have agreed to a consent settlement that required a recall or repurchase remedy. The absence of such a provision in the Final Consent Decree is the major complaint that the critics have presented to Judge Gesell for his consideration in evaluating the proposed settlement.

If the Court disapproves the settlement for this reason, the section 12 case will certainly go forward in litigation. We believe that the opponents of this settlement overlook the very essence of any compromise and the benefits of the prompt and comprehensive safety related measures set forth in the decree.

No one needs to lecture this subcommittee regarding the virtues of compromise. A detailed Consent Decree is the result of the same sort of negotiations that accompany the passage of a complicated piece of legislation. During that process, commitments are made and commitments are honored. If the Final Consent Decree is approved by the court, we and our clients are committed to its timely implementation. We are confident that the Department of Justice and the Commission will do likewise, and that neither will do anything to undermine the settlement or walk away from it. We ask the subcommittee to approach this problem in the same spirit.

In the past, we have followed with great interest and some frustration, the ongoing Congressional deliberations and hearings regarding ATV's. Let me make one point clear, in no way do we or our clients question the propriety of Congressional oversight of the Commission or the review of its enabling act.

Now that the Final Consent Decree is in the public domain, we are glad to have this opportunity for the first time, to present our clients' views directly and in detail. We hope that this testimony and our brief submitted to the court will help with the subcommittee's review of the Final Consent decree. We are aware that you will want to consider, as you have today, the views of critics of the proposed Consent Decree as well.

With all respect, we ask the committee to defer any final judgment regarding the need for legislation until Judge Gesell has considered the presentations on April 18 and decided whether this decree should be approved in the public interest.

Next, we urge the subcommittee to examine H.R. 3991 in light of the proposed Final Consent Decree. Some of the provisions of the bill, of course as Mr. Cutler pointed out, are duplicative of the more detailed far reaching provisions of the decree. With respect to the bill's prohibition of any future sales of three-wheel ATV's, new or used, by the distributors and their dealers and the offer or requirement of a repurchase, we ask the subcommittee to consider the following:

First, such requirements go far beyond any judicial or agency determinations regarding ATV's. Our clients never had a chance to challenge the findings of the CPSC Task Force report and H.R. 3991 goes far beyond even the recommendations of that report. As I have indicated, any fair evaluation of the allegations regarding ATV's requires resolution of a wide range of engineering and technical issues, a task not normally or comfortably within this subcommittee's area of expertise.

Second, there is considerable doubt that recall or repurchase of ATV's will have a beneficial impact on ATV safety. This was the subject of some disagreement among the members of the Commission and with good reason. If the problem lies in advancing the proper use of the product by fully informed operators, then the comprehensive measures set forth in the Final Consent Decree address the problems satisfactorily.

Third, relief of the sort being contemplated by this proposed legislation is currently being sought in five class action suits brought against one or more of the ATV distributors on behalf of all owners of three-wheel ATV's. If there have been any deficiencies in the warnings or advertising of the ATV distributors—which we deny—these lawsuits provide a forum in which the technical and other issues can be litigated to conclusion. Only in such an adjudicative proceeding will the distributors have the opportunity to defend their products on the basis of a full record developed under traditional procedural and evidentiary rules.

The most important argument against H.R. 3991, of course, is the one made by Mr. Cutler. In the interest of fairness, we and our clients ask this subcommittee to give the Final Consent Decree, if approved by the court, a chance to work.

It is immediate, it is unprecedented and we believe it will be effective. Mr. Chairman, I appreciate the opportunity to present the distributors' views and I would now like to ask Mr. Toms to present his brief testimony, following which all of us will available for questions.

[The court brief referred to is retained in the subcommittee files.]

STATEMENT OF DOUGLAS W. TOMS

Mr. Toms. Thank you, Mr. Chairman.

Mr. Florio. For the record, it should be made clear that your clients have been invited in the past to appear before our committee and chose not to do so.

Mr. Toms. Mr. Chairman, Mr. Barton, Mr. Nielson, my name is Doug Toms. I have been retained by the American Honda Motor Company. I have been retained to advice the ATV industry, in the implementation of these many programs related to the Consent Decree. I appreciate the opportunity to be here.

By way of background, I was the former Administrator of the National Highway Traffic Safety Administration. I was the Director of Motor Vehicles for the State of Washington. Until just recently, I was the president and CEO of AirSensors, Inc., an electronic manufacturing firm in Seattle. Previously, I was the president of the Holiday Rambler Corporation, and the chairman of the Recreation Vehicle Industry Association.

The bulk of my professional experience has centered on vehicular safety. I am a graduate of the Highway Traffic Safety Center at Michigan State University. I have written widely in this field. I served many years as a professor in the field of traffic safety. I have been heavily involved in the rulemaking relating to motorcycles and other like type products to ATV's.

Based on my professional experience in and out of Government, I have no reservation whatsoever in endorsing the proposed settlement of the section 12 case on the terms set forth in the decree. I had been working with the ATV distributors with regard to the negotiation of the Final Consent Decree. I certainly agree with what Mr. Willens said regarding the scope and the detail of this settlement proposal.

It represents an unprecedented effort to resolve a very complicated and an emotional safety problem, and it is being done so through careful negotiation and reasoned compromise.

Based on my experience with the ATV distributors, I know that they are committed to the full and prompt implementation of the Consent Decree, and I am personally committed to assist in this effort. I know that this subcommittee and other observers of the ATV have seen that they are skeptical of the hands-on training program that we advocate for the ATV users.

In response, I must first say that experience gained through training does make a difference. Second, I have been working closely with the SVIA, the Specialty Vehicle Institute of America, which has been designated as the principal organization to establish and implement this important training program. I have personally examined all of the programs of the SVIA in every element of this particular training program for ATV's.

I further expect to devote a considerable amount of time to implementing this program. I wish to assure the subcommittee that when this program is established and operational, that this training program will be able to meet the most critical scrutiny of any qualified professional observer.

Careful analysis of motorcycle training and driver education programs have been made in relationship to this ATV training program. In other words, we have examined driver education and motorcycle training to take the best of those programs to apply to ATV training. The quality of this new program will be comparable and in most ways superior, to anything that has been done to date worldwide.

The people that have been involved in the preparation of this program are the best in their field. They are familiar with various training programs in Europe, Japan and throughout North America. All of the latest techniques and procedures are being employed.

We are working very hard now to put this program into place. Area administrators are being recruited, full support personnel are being recruited, and facilities are being sought. The curriculum is essentially finished. We have at this moment, a corps group of chief instructors prepared to train the local instructors. We fully expect to meet the objective of 1,000 trained local instructors within 6 months of the decree's approval. This organization will then, in turn, be capable of training thousands of ATV users.

We will be making an extraordinary effort to get ATV riders into this training course. We are contacting State departments of education and other official organizations. We are making every effort to involve State and community programs. Special efforts are being put in place to ensure the commitment and involvement of each ATV dealer. We want him to go to great lengths to encourage his customers to enroll.

Motorcycle clubs, ATV clubs, other organizations are all being solicited to encourage new and existing ATV purchasers to take the training. In short, we are pursuing all of the opportunities that are currently available to us.

I hope this subcommittee recognizes the importance of the unprecedented incentives offered under the training program. Our interest here is in motivating new purchasers of ATV's, especially those who have never owned or ridden a vehicle before, for these new purchasers, the distributors are offering $100 Saving Bond; $50 in cash; or a merchandise certificate. We let each purchaser decide which they want.

I should also point out here that in one very important respect, I am kind of distressed that a private industry is offering a financial incentive for training. Clearly, the most significant incentive for training would be if the States were to enact laws requiring ATV licensing and/or skill certification. This is the type of legislation that we have been vigorously supporting for years.

It is unfortunate that some of the very States whose Attorneys General have criticized the Consent Decree have not yet to date enacted even a most basis ATV safety requirement such as the use of helmets.

I hope that my testimony provides additional evidence to you of the commitment of the ATV distributors to the undertaking set forth in the decree. I feel compelled to add to my support to the request made by Mr. Cutler, that this settlement be given an opportunity to work.

During my tenure as the National Highway Traffic Safety Administrator, I was deeply involved in many recall campaigns. It is critical that the engineering community, statistical analysts, and other experts be permitted to employ the professional judgment of their disciplines in evaluating ATV data.

Recently, I have spent a great deal of time reviewing CPSC NEISS data. I should add that I am very impressed with those data; very well done and very thorough. There are many products such as other off road vehicles, skis, snowmobiles, bicycles, that when adjusted to a common scale of hours of use, have a much higher injury rate than ATV's. These are typical examples of data that are currently not being examined in ATV appraisal.

As an ex-federal administrator, I find H.R. 3991 most troubling. I think it is stretching to force a remedy that in many ways contradicts the data and circumvents the current administrative and executive process. It aborts the responsibilities previously granted to the CPSC by the enabling legislation.

No regulatory agency like NHTSA, EPA, or CPSC can effectively regulate or work with the industries that they are charged to regulate if Congress seeks to make end run on their decisions.

The Consent Decree is, in my opinion, the most comprehensive action that I have ever seen in 30 years of Government and industry experience. To suggest further action that: (1) is not supported by those data; (2) circumvents the normal regulatory process, and, (3) aborts the negotiated settlement of a regulatory agency is in my opinion unwise.

Mr. Chairman, Mr. Barton, Mr. Nielson, we are ready for questions.

Mr. FLORIO. Mr. Barton, do you have questions?

Mr. BARTON. I have a lot of questions. First of all, I am sitting here and am reminded of a distinguished member of the other body, Senator Irvin when he talked about his feeling like a poor little country lawyer from North Carolina during the Watergate hearings. I'm not even a country lawyer, I'm an engineer and you high powered attorneys sitting out there and declaring my bill to be unconstitutional and all of these things, I am not sure that we are talking about the same piece of legislation.

I am honored that we have gotten your attention. I believe I am correct in this statement. This is the first time that you have testified on the record, at least before our committee; is that correct or incorrect?

Mr. WILLENS. I want to make certain that the committee understands my statement. The industry on prior occasions had been represented by Mr. Isley who is the director of the specialty vehicle industry association.

Mr. BARTON. You all have testified.

Mr. WILLENS. We have been invited to appear here before. We have elected to appear through Mr. Isley, among other reasons because this investigation and the litigation has been pending. We felt that it would be premature or inappropriate for us as counsel to appear on behalf of our clients until that was brought to its present state.

Mr. **Barton**. In any event, I am glad that you chose to appear today. I was brought up that you can't discuss the issue if both parties to the issue don't appear and you are here. I was also brought up that if something is worth doing, it's worth fighting for. I happen to think this bill is a step in the right direction, and I am going to try and go through some of these problems that you have raised with it and discuss it.

The first question I would have is for Mr. Cutler. Can you, with a straight face, sit there and make the statement that this bill is unconstitutional? I know that you are paid to make those kind of statements, but I am a little amazed that a refund provision and some safety standards can be construed to be unconstitutional.

Mr. **Cutler**. Mr. Barton, I would make the same statement if I were not paid. I am a virtually retired partner of my law firm. I receive a fixed compensation, regardless of the income that the other partners receive, because I am on a declining scale.

I have taken part in three or four of the principal separation of powers cases in the last 10 or 15 years before the Supreme Court. I argued for the Comptroller General in the case where I believe the chairman was one of the Plaintiff's, asserting separation of powers arguments against the Gramm-Rudman legislation, which are not dissimilar from ones we are asserting now.

These arguments, I think, are well founded. I would not present them if I did not think so. They are joined in by two distinguished law professors.

Mr. **Barton**. I don't doubt the distinguishness of your company. It just kind of reminds me of a theory we have down in Texas. If you are in a corner, throw everything at the wall and hope something will stick. It's usually pretty easy to start talking constitutional grounds. If you say so, I am going to assume that you——

Mr. **Cutler**. Mr. Barton, I respect all of your motivations as a legislator. I hope you will respect mine as a lawyer.

Mr. **Barton**. I am very respectful. Let me ask another question——

Mr. **Florio**. Would the gentleman yield?

Mr. **Barton**. I would be glad to, Mr. Chairman.

Mr. **Florio**. We do have a vote, and I think we are down to less than 10 minutes. Can I get some sense as to the intention of Mr. Barton and the intention of Mr. Nielson in terms of questions. It might be appropriate to go and vote and come back.

Mr. **Barton**. I planned to come back, and since we have this panel for the first time before this committee, I want to ask——

Mr. **Florio**. Then the committee will stand in recess while we vote. When we reconvene, the gentleman will be recognized. The committee will stand in recess for approximately 10 minutes.

[Brief recess.]

Mr. **Florio**. This hearing will reconvene. Mr. Barton.

Mr. **Barton**. Thank you, Mr. Chairman. I am going to go through a list of questions here, and I will direct them at Mr. Cutler, who I assume is the senior spokesperson. If he is not the appropriate person, whoever feels the best qualified can answer.

Mr. **Cutler**. Mr. Willens led the group that negotiated this Consent Decree, Mr. Barton. If there are questions about the decree or the prior negotiations, I suggest that you address them to him.

Mr. **Barton**. All right, I appreciate that. The first question is a general question. I would like to know to what extent ATV's are sold in Japan, and I would like to know if any restrictions including licensing requirements are imposed on the sale or use of ATV's in Japan.

Mr. **Willens**. It is our understanding, Mr. Congressman, that the vehicles are sold in relatively small numbers in Japan. I think they are sold with some restrictions and I will check into that and supply that information for the record.

Mr. **Barton**. If you could, get those restrictions to us, please.

Mr. **Willens**. Yes.

Mr. **Barton**. The second question is a more parochial question. The reason that I got involved in this issue in the first place is that I received a letter approximately 3 years ago about an individual named Adam Gordon, a young man in my District, an 11 years old who was killed while riding a Honda 200E. At that time, Honda did not put warnings on its vehicles, and I am told that they didn't begin to do so on that particular vehicle until 1986.

Under the Consent Decree Honda has agreed that children under the age of 16 should not ride such a large ATV, yet in a disposition in a lawsuit, Honda claims that children younger than 14 may also be able to operate the vehicle properly.

Whichever one of you is the spokesperson for Honda, could you inform me of what Honda's real position is or what its current position is? Can children ride 200cc ATV's like the Honda 200E Big red?

Mr. **Willens**. Under the terms of the proposed Final Consent Decree, there are age recommendations there that provide that a vehicle of that size, larger than 90cc, is to be driven by children 16 and older.

Mr. **Barton**. The current position would be that children shouldn't ride this large of a machine?

Mr. **Willens**. There was labeling before this Consent Decree. The age labeling was for 14 and older.

Mr. **Barton**. When, on that point, did the industry begin to warn or issue warning labels? Do you agree that at this time in 1982, there were no warnings required?

Mr. **Willens**. Mr. Congressman, I wouldn't agree to that statement. I will investigate precisely what the status of the warnings were at that time, if 1982 is the year of particular interest to you. We will supply that for the record.

I think it is important to note in this connection, Congressman Barton, that there have always been detailed warnings put out to purchasers of the machine, owners' manuals containing considerable detail and labeling on the machine.

The labeling has changed over time, to be sure. As the experience grows within the industry and as it becomes clear that some additional information might be usefully supplied—we will be glad to look into the particular time period that you have in mind, and supply that information.

Mr. **Florio**. Would the gentleman yield?

Mr. **Barton**. I would be glad to yield.

Mr. **Florio**. You are not representing to us that the warnings that have been put forward from the beginning all had restrictions with regard to age limitations?

Mr. **Willens**. No, I am not saying that, Mr. Chairman.

Mr. **Florio**. At some point, the decision was made to correlate age and power, but that was not the case from the very beginning.

Mr. **Willens**. One thing that ought to be made clear, Mr. Chairman, is that these age recommendations are precisely that. It has always been made clear to the purchasers of the machine that children's use of them ought to be carefully supervised by the parents, and the parents rather than the distributors or dealers have the best judgment about the physical skills of their children and whether or not they have the judgment available to ride the machines.

We believe, in fact, that the age 16, which was simply part of a negotiated settlement of a lawsuit, really doesn't have any necessary greater technical basis for it than the age of 14. So we disagree with those critics, Mr. Chairman, who say that there is a single fixed age that is appropriate to be put into place with respect to the use of these machines.

Mr. **Florio**. The provisions in the settlement agreement are not to your liking either?

Mr. **Willens**. We have agreed as part of the settlement to enforce agreements with respect to age recommendations.

Mr. **Florio**. They are no longer advisory, they are no longer recommending that the parents should supervise. You have agreed to this new concept of mandating.

Mr. **Willens**. Of course, our clients are going to comply with the requirements to the Consent Decree.

Mr. **Florio**. They agreed to the Consent Decree?

Mr. **Willens**. We agreed to it and it is going to be implemented and enforced by a court. We will live with it. The point that I am trying to make is that the decree is not inconsistent with telling parents to exercise supervision with respect to their children of any age.

Mr. **Florio**. It is inconsistent with the idea of holding out the approach previously which the industry apparently felt was adequate, to recommend and rely upon the supervisory discretion of the parents. It is not like somebody else did it, you agreed to it, that we are going to have this mandated provision with regard to use of certain types of vehicles by certain age groups. That is all I am pointing out there. There is a difference.

Mr. **Willens**. All I'm pointing out is that there is a continued need for parental supervision with respect to 12 year olds who can ride certain sized machines or——

Mr. **Florio**. Of course. I mean, it is interesting to say that. The point that we are talking about is the nature of the settlement. The ramifications of the bill and what I think is your concession that there has been a change in the industry's position with regard to exclusive reliance upon advice by parents as to usage.

And now the new provisions in the agreement that you have settled on, that will provide for mandatory limitations. I thank the gentleman.

Mr. Barton. Thank you, Mr. Chairman. Again, to extend the thought on the warnings, in 1984 U-Haul Company in the United States purchased a number of Honda three-wheel ATV's to rent to consumers. U-Haul developed their own warning label with a skull and crossbones and some very dramatic warnings that said things like ATV's flip over every which way, ATV's corners strangely.

As a reaction to the warning that the U-Haul people developed, one Honda lawyer wrote to his colleagues and I quote: "It may be beneficial to immediately contact the individual at U-Haul's home office in Phoenix in an effort to talk with them and get them lined up in a manner consistent with the Honda position." Honda wrote to U-Haul protesting that it was misleading and untrue to say that ATV's flip over and demanded in the strongest possible way that U-Haul remove these labels immediately.

What is your comment on that?

Mr. Willens. Mr. Congressman, that exchange of correspondence has been the subject of, I think, three prior hearings and many lawsuits. Honda did take issue with the proposed labeling for the reasons summarized in that letter.

Mr. Barton. You just said that you all were providing warning labels—you didn't say labels—but were providing some sort of a warning. Now, here's a company that actually did put a warning label on the equipment and it appears to me that one Honda lawyer, maybe not the entire company, but at least somebody associated with Honda protested warning labels very vigorously and said remove them immediately.

Mr. Willens. And with good reason, Mr. Congressman. We felt that those warnings were not required. There were labels on the machines and Honda took issue with the action taken by its lessee, if that's the proper term, with respect to putting labels and warnings of that kind on a Honda product.

Honda did not believe at the time that it was required and we do not believe now that that kind of warning is required. What we have done is negotiated in this Final Consent Decree for mandatory labels for machines in the future, for which labels are to be sent to known past purchasers and those labels represent very detailed information right on the machine for riders and operators to be guided by.

We think if people did in fact comply with the information that has been on labels for years, that there would not have been the number of accidents and injuries associated with the use of ATV's.

Mr. Barton. What did U-Haul do as a consequence of Honda's request.

Mr. Willens. I do not remember, Mr. Congressman. I will check into that and supply that for the record.

Mr. Barton. To the best of your recollection, is it not true at least as one consequence, that they ceased to rent the vehicles?

Mr. Willens. I can't either confirm or deny that.

Mr. Barton. You are not personally aware of that?

Mr. Willens. I can't confirm or deny that, Mr. Congressman.

Mr. Barton. The Consent Decree which I think most of us agree is a good thing—I don't think anybody on the subcommittee is opposed to the signed Consent Decree. The Consent Decree requires the industry to warn that ATV riders should wear helmets and protective clothing.

Yet, at a January 28 ATV hearing with the Government Operations subcommittee, a Yamaha dealer said you can't tell me I have to put on all this gear to be safe, that doesn't make it safe.

Again, that is one individual. I am not saying that person speaks for the entire industry. That leads people like me to believe that there perhaps is a lack of sincerity on behalf of the industry, to make the Consent Decree work.

I would like to know your position on that. Is that just one man speaking out of line——

Mr. **Willens**. Let me answer that question.

Mr. **Barton**. If so, what would you do to enforce the Consent Decree?

Mr. **Willens**. In the interest of collegiality, Mr. Congressman, I would like to defer to counsel for Yamaha.

Mr. **Barton**. I was just pointing them at you because I was told to.

Mr. **Willens**. I appreciate that, Mr. Congressman.

Mr. **Schneider**. The distributors are committed and Yamaha is committed to carrying out the Consent Decree, using its best efforts to getting all of its dealers to comply with the Consent Decree. That is not always easy.

Mr. **Florio**. Would the gentleman yield?

Mr. **Barton**. Sure.

Mr. **Florio**. When you say best efforts, are we talking about yanking franchises if we find non-compliance. What is entailed in ones best efforts? One sends out a note, and I assume that is a best effort.

Mr. **Cutler**. It is a defined term in the Consent Decree, Mr. Chairman. You will find it on page four.

Mr. **Florio**. Does it go so far as to——

Mr. **Cutler**. Anything that the distributors can do by law including provisions in future contracts, to require dealers to comply with the duties that the distributors are bound to impose on dealers as a result of this Consent Decree.

Mr. **Florio**. Are there standard franchise contracts in this industry?

Mr. **Willens**. No, Mr. Chairman. The franchise agreements differ from company to company, and the techniques for dealing with alleged infractions of the franchise agreement, of course, differ as well.

Mr. **Florio**. Obviously with all of the legal talent we have here who have reviewed those contracts, is it contemplated by you as legal advisors to your clients that franchise contract revocation provisions in the four or five contracts would permit upon the failure on the part of a distributor, that is the distributor in the field, to comply with something that the manufacturers have entered into.

Would that be grounds for revocation of a franchise agreement?

Mr. **Willens**. Let me speak for American Honda alone on this, Mr. Chairman. It is the legal advice that has been provided to our client that the franchise agreement is sufficiently broad to incorporate under its terms directives from the distributors with respect to implementation of this Consent Decree.

If a dealer does not comply with the requirements and then there is the effort to bring them into compliance, then there is a policy and a legal right within American Honda as a distributor, to implement that contract if it is consistent with State law in place at the time.

So I do think there are strong legal authority in place that would enable the distributors to enforce their franchise agreements.

Mr. FLORIO. Is the response on the part of the other people substantially the same?

Mr. GERCHICK. Mr. Chairman, yes it is. On behalf of Kawasaki, action has already been taken to incorporate these requirements in contracts.

Mr. FLORIO. Could we get, just for the record, a statement from the other representatives.

Mr. CLADUHOS. On behalf of Suzuki, I am Harry Claduhos with Pettit and Martin. We have subscribed to what Mr. Willens said in behalf of American Honda.

Mr. SCHNEIDER. For Yamaha, we feel the same way.

Mr. CUTLER. I would also add, Mr. Chairman, that this decree is in the hands of a very tough, hard nosed Federal judge if he approves it. The distributors would be in contempt of the decree if they failed to honor this obligation. That is a much more serious sanction than a multi-year proceeding before an administrative agency.

Mr. FLORIO. When you use the term distributors, I have been using it perhaps inappropriately. Manufacturers as opposed to the distributors. I guess we are really talking about the Japanese manufacturers, the American distributors, and what would you use as the next term for the franchise holders.

Mr. CUTLER. Perhaps Mr. Willens should explain it. Each of the manufacturers has an American company which is the distributor and which is bound by this decree.

Mr. FLORIO. What do you use as the——

Mr. WILLENS. We use the word dealer.

Mr. FLORIO. Dealer. Just to get our jargon correct.

Mr. WILLENS. That is exactly correct.

Mr. FLORIO. I thank you.

Mr. BARTON. I want to follow up on that now. I believe most of you gentlemen have been here for the entire hearing. We had the Attorney General of Tennessee testify to the effect that when the Virginia legislature was considering some licensing requirements on ATV's, that spokesmen for the dealers, not for the manufacturers, tried to defeat that very strongly.

One of the arguments they used was that they weren't bound by this preliminary Consent Decree at the time, because they weren't a manufacturer. I want to know your response to that, and number two, assuming the Consent Decree becomes finalized on April 18, will each of your companies that you are representing here today, reverse their position and begin to advocate and push for the State legislation that is very similar to what the Attorney Generals are using as model legislation.

Mr. **Willens**. Congressman Barton, I am glad that you asked that question, as they say. The State Attorney Generals have been derelict in their responsibilities to deal with State legislation. This industry, acting through SVIA, has been urging State legislation to establish licensing, and other requirements for ATV users for years.

The CPSC hasn't supported those efforts until recently. We believe we wouldn't be here today if the States had acted reasonably in the area of driver training, driver licensing, requiring the use of protective equipment as they have with respect to other kinds of recreational products and motor vehicles.

Mr. **Barton**. You are saying that you have always been supportive?

Mr. **Willens**. We have been endorsing it and we will continue to endorse it. What we need is less rhetoric from the State Attorney Generals and more action.

Mr. **Barton**. What happened in Virginia? If you were endorsing the legislation, why did some people work so hard to defeat it who are at least in some way, associated with the companies that you represent?

Mr. **Willens**. We have model legislation. We are committed to support that and to support all legislation that is consistent with the Final Consent Decree. We did not give up our First Amendment rights.

Mr. **Barton**. Nobody is asking you to.

Mr. **Willens**. If you will let me finish, there are those that have asked.

Mr. **Barton**. I am not one of them.

Mr. **Willens**. Thank you, Mr. Congressman, but there are those who have asked. We have declined and feel that we can continue to oppose ATV legislation that does not well serve our clients interest or our dealers. There are 5,000 dealers out there whose livelihood depends on the profitable sale of ATV's, motorcycles and other products sold by these four companies.

It is an economic interest here that we feel sometimes is being overlooked.

Mr. **Barton**. Let's for the record here, I am pleased to know that you are supportive of legislation. Tell me what you support? Do you support the prohibition against children under 12 riding ATV's?

Mr. **Willens**. Let me turn in this case, to my colleague from Suzuki, whose client does market those products.

Mr. **Claduhos**. I would like at this time if I may please, to clear up the confusion concerning the all terrain vehicles that are marketed for children under 12 years old.

Suzuki makes what they call an LT-50, the 50cc for children under 12. The fact of the matter is that with respect to the child sized ATV's there have been only—I say only in quotes because any death is a tragic thing—there have been only two fatalities out of 70,000 units since they have been marketed.

In the one case, the fatality occurred when a child was on a small child-sized ATV crossing a road and was hit by a car. In the other case, a child was riding a small sized ATV and it drove over—unsupervised by any parent—drove over a retainer wall and was killed.

Apart from that, we know of no other fatalities nor do I think the CPSC know of any other fatalities. With respect to injuries for children under 12 riding the child-sized ATV's there are just a handful. These are relatively minor injuries.

Mr. BARTON. That's a very nice answer and I appreciate it.

Mr. CLADUHOS. The statistics, Mr. Congressman, do not bear a need for remedial action with respect to the child-sized ATV's.

Mr. BARTON. So you do not support banning sale and use of ATV's for children under 12?

Mr. CLADUHOS. No, we do not. But I should point out that——

Mr. BARTON. That's all I wanted to know.

Mr. CLADUHOS. If I may, for your benefit, point out Mr. Congressman that the Final Consent Decree leaves open in the discretion of the Commission, whether they wish to take action in this area.

Mr. BARTON. I understand that. Do you support legislation at the State level that would set sizing requirements on use of ATV's by children 12 to 16?

Mr. WILLENS. Let me speak to that, Mr. Congressman. We will support any legislation that is consistent with those age restrictions set forth in the Consent Decree. For example, if a State wants to abolish or establish as a minimum age of 16 for all machines and not provide any option for 12 year olds to use smaller machines, then we would oppose that. It is inconsistent with the Consent Decree and the age recommendations that we agreed to.

I understand that the issue in Virginia was whether or not there should be an agricultural exemption which would permit children under 16 on farms to ride the vehicles. The farm lobby and the dealers were in support of exemption of this kind.

There was no lobbying by SVIA or the distributors in Virginia that was inconsistent in any respect with the Final Consent Decree. The incident came to our attention and was the subject of a letter of inquiry from Mr. Lacy, the general counsel of CPSC. There was a response to it from SVIA and from counsel for SVIA that I think was fully dispositive of the suggestion that SVIA or its member companies represented here had done anything inconsistent with the Consent Decree.

Mr. BARTON. My third point, do you support legislation at the State level that requires some sort of an operators license before an individual is allowed to operate an ATV?

Mr. WILLENS. Yes, Congressman. That is an important part of our model of legislation.

Mr. BARTON. You do support that?

Mr. WILLENS. Yes. To provide a licensing requirement.

Mr. BARTON. Before I go, I just want to make sure I understand what you support. Do you support anything at the State level that is consistent with the sizing requirements in the Consent Decree; is that a fair statement?

Mr. WILLENS. I certainly do support that. It doesn't limit what we will support, but there are all——

Mr. BARTON. You also support a license in order to operate an ATV?

Mr. **Willens**. That is correct, and in some instances requiring a skills test or whatever the State decides in its own discretion is appropriate.

Mr. **Barton**. Do you support mandatory training for people that want to own and operate ATV's?

Mr. **Willens**. It depends on what you mean by mandatory. If the State decides that there is a test that has to be passed, that certainly is consistent with our clients' views. We don't think that the States should restrict our ability to sell the product until people have taken a training course. But we do agree that as with motor vehicles and other kinds of equipment, that the State has a fair and legitimate interest in making sure that there is a safe use of these products.

That is in our client's interest. We support that kind of legislation.

Mr. **Gerchick**. Mr. Barton, may I just add that the Final Consent Decree does include a provision directly on the State legislative initiative point. It is at page 58 of the decree. It does indicate that there are pending in certain State legislatures proposals for licensing and certification of operators.

In entering into the decree, the defendants agree and undertake not to oppose such pending or future State legislation to the extent that it provides for age limits for ATV operators consistent with the age recommendations specified in the decree, or for the requirement of hands-on training before a certificate or license is issued.

Mr. **Barton**. I appreciate that.

Mr. **Florio**. Would the gentleman yield?

Mr. **Barton**. I would be happy to yield.

Mr. **Florio**. I just want to get some clarification. On the whole general subject of State legislation that may go beyond, clearly beyond the scope of the settlement agreement, I assume from what you said you would not support that.

I am wondering if you are not supporting it as a matter of policy or you are making some sort of a legal argument that State legislation that goes beyond the scope or is more restrictive than this settlement agreement is somehow is inappropriate, illegal, unconstitutional——

Mr. **Willens**. I think that——

Mr. **Florio**. You just don't support it because you regard it as not in your interest?

Mr. **Willens**. I think that the Chair will recognize that the kind of legislative proposals that come before State legislature varies widely. SVIA does, on behalf of the industry, have a program to monitor those laws and to express the views of the member companies.

Our positions are limited by the Consent Decree with respect to age recommendations, as my colleagues have emphasized. That leaves us free to strive to get model legislation in the States that is comparable to the sort of provisions that we have been endorsing for years.

Mr. **Florio**. Maybe I didn't phrase the question very well. You are not making the argument that somehow by virtue of this Consent Decree, States are precluded from passing laws that go way beyond the scope of the agreement.

Mr. **Cutler**. We are not making a pre-exemption argument. Indeed, we have long been supporting things not covered by the decree such as mandatory State or Federal licensing for that matter or minimum skill requirements.

Mr. **Florio**. How about a provision that provided that in a State an individual that wanted to get a refund from the manufacturer of the machine that they had purchased in the State with which there is no outside State contacts, would that be something that you would regard——

Mr. **Cutler**. That raises the same trial by legislature issues that I mentioned. And there might also be some commerce clause problems presented by that.

Mr. **Florio**. Thank you.

Mr. **Barton**. I wanted to kind of switch—and I appreciate the education on that issue just then. It is my understanding that during the negotiations between your industry spokesmen and the Consumer Product Safety Commission and the Justice Department kind to finalize the Consent Decree that was signed the day before yesterday, that your industry suggested language that would make the Consent Decree null and void if the Congress passed any law in this area.

I also understand that your spokesperson has indicated that it would not be in the best interest of the Consent Decree being signed by your industry if the Commissioners or Justice testified at this hearing today.

I would like for you folks to comment on that and explain why you wouldn't want the CPSC or Justice people here to testify here today.

Mr. **Willens**. Let me answer the first part of that, and then Mr. Cutler can perhaps address the second. During the negotiations, particularly in the latter months, we became very concerned by the possibility that a carefully negotiated settlement of the section 12 case would be superseded by legislation such as this subcommittee is considering.

It was a matter of considerable importance to our clients, because as I testified, our clients would not have settled the section 12 case if the Government had insisted on a refund requirement.

To settle on terms short of that, and then to have Congress enact the law that would impose that additional requirement, seemed to our clients and many of their advisors to suggest that the settlement would not be well advised—in their interest.

There was a diversity of views on that, so we negotiated with our Department of Justice and Commission adversaries whether or not there was a way to anticipate that problem and if so, reassess the Consent Decree in light of any legislation that might be enacted by this body.

Mr. **Cutler**. I might to add to that, Mr. Barton, that the Consent Decree contains an explicit provision which has the effect of barring the Commission itself from instituting a proceeding to invoke its own power after hearing to order recalls or refunds for a period of 12 months, and then only on the basis of new evidence.

This bill, in effect if passed, would simply override that. It would, in effect, cancel out that provision of the Consent Decree. Beyond that, although the decree provisions relating to training, labels, warnings, et cetera, are supposed to last for 10 years, this bill authorizes the Commission, instructs the Commission to put out different—enables them to put out different provisions and requires that it be done within 18 months. It simply takes what has been agreed and authorizes the Commission one of the agreers, to set it aside.

We could well be in the position where we could have spent $10, $20 or $30 million on this training program, and along comes the Commission and says scrap all of that and start all over again.

Mr. BARTON. What does that have to do with them testifying before this committee?

Mr. CUTLER. That's your second question, and I will be glad to deal with that. We did not wish ourselves to testify before the committee while the decree is pending judicially before Judge Gesell. He has not approved this Consent Decree yet.

Indeed, the first date for this hearing was set while we were still in negotiations of the decree which we have now agreed on and filed last Monday, subject to Judge Gesell's approval. Judges don't take very kindly to statements made out of their own hearing room about what is pending before the tribunal.

We would much preferred to have had this hearing after April 18. If the judge approved the Consent Decree, we would be happy to come. And we will come back again whenever you want us.

So far as Commission testimony is concerned, that is an entirely different matter. I don't know that we have taken any position on that.

Mr. FLORIO. The gentleman's time has expired.

Mr. BARTON. Mr. Chairman, I would ask permission to submit several other questions for the record.

Mr. FLORIO. Without objection. We trust that our witnesses will comply. Mr. Nielson.

Mr. NIELSON. Mr. Toms, you have been ignored, so I am going to ask you some questions. On page three you make a statement that we expect to meet the objectives of 1,000 trained instructors within 6 months to the decree's approval.

Is that Honda alone, or is that the entire industry?

Mr. TOMS. That is the entire industry, Mr. Nielson.

Mr. NIELSON. It was not clear from the context. On page four you have a statement that I am distressed that private industry is offering financial incentive for training. Clearly, the most significant incentive for training would be for the States to enact laws requiring ATV's and so on.

Do you know of any other case where industry has been forced to pay people as an incentive to come and take training?

Mr. TOMS. None, whatsoever.

Mr. NIELSON. As far as you are concerned, it is completely unprecedented?

Mr. TOMS. It is an unprecedented move.

Mr. NIELSON. Who is going to pay this money that industry is going to have to offer these people to come to training?

Mr. TOMS. It is going to come from the distributors.

Mr. NIELSON. It's from the distributors. Mr. Claduhos, you mentioned your small-sized ATV, children sized ATV. Do you also manufacture large-sized ATV's?

Mr. **Claduhos**. Yes, Congressman Nielson, we do.

Mr. **Nielson**. Insofar as the large sized ATV's are concerned, you concur with the other distributors on those?

Mr. **Claduhos**. Yes, absolutely. I want to add if I may, Congressman Nielson, that the CPSC has made it very clear that if you ban the child-sized and youth sized ATV's, what you are going to do is to encourage those children and those youths to go on mismatched ATV's where the high risk exists.

Mr. **Nielson**. If they passed a law saying you have to be 14 or more to ride for example, that would eliminate your small ATV's?

Mr. **Claduhos**. That is correct, Congressman.

Mr. **Nielson**. Let me ask another question. I have a whole series of questions for Mr. Willens. You said the Final Consent Decree is current before Judge Gesell. By the way, Mr. Cutler said he is a tough, hard-nosed judge if he decides.

What is he if he doesn't decide?

Mr. **Willens**. He is a distinguished judge in any event.

I don't think he would resent in any way, the description that Mr. Cutler has put into the record.

Mr. **Nielson**. He said he is tough and hard-nosed if he agrees to the Consent Decree. He left the other phrase out.

Mr. **Cutler**. What I meant by that, Mr. Nielson, was he hasn't even agreed yet and he may decide to reject it. If he agrees, he is going to enforce it. He is going to hold us up by our toes.

Mr. **Nielson**. If he doesn't agree, he's no longer tough and hard-nosed?

Mr. **Cutler**. He's just as tough and hard-nosed.

Mr. **Nielson**. Just curious.

Mr. **Cutler**. If he disapproves, there will be a litigation.

Mr. **Nielson**. He said he is going to hold a final hearing on this issue by April 18. What is the current status, is he still going to meet that deadline?

Mr. **Willens**. Yes, Congressman. The distributors and the Department of Justice submitted their briefs in support of the Final Consent Decree. He gave 2 weeks for the critics, including the State Attorney Generals, to file their criticisms of the Final Consent Decree.

Mr. **Nielson**. Will Members of Congress be allowed to testify before the Judge?

Mr. **Willens**. Senator D'Amato has been given the status of *amici*—a friend of the court, and there is only one of them I am reminded. He will be, I think, participating. We don't know exactly how, but everyone has been invited to reach agreement as to how much time they will be allocated on April 18.

Mr. **Nielson**. All interested parties can participate?

Mr. **Willens**. I think——

Mr. **Nielson**. Other Members of Congress, like Mr. Barton, for example.

Mr. **Willens**. I think that written documents without doubt would be received by the court. I think only those who have requested the status of *amici* will be allowed to participate orally at the hearing on April 18.

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Mr. NIELSON. What will happen if the judge does not approve the Consent Decree or if he insists on it plus refunds, what would your position be in that case?

Mr. WILLENS. The second question is easier than the first, Congressman. If he were to insist as some of the critics have, that there be a refund requirement, the case would not be settled. It would be litigated. There would be no reason for the industry to settle on those terms.

Mr. NIELSON. What if he doesn't approve the decree at all?

Mr. WILLENS. There, it would depend on exactly what he found to be the deficiencies in the decree. It might be that there might be some minor deficiencies in the decree that were either brought to his attention by the critics or others, that the parties might then reconsider and represent to the court.

It would depend on the grounds that he identified for concluding that this was not a fair, reasonable compromise of this disputed litigation and in the public interest.

Mr. NIELSON. This Final Consent Decree requires a 1 year moratorium on CPSC for further action in this regard. What happens if the decree is passed by the judge and this bill is also passed; what then happens?

Mr. WILLENS. In the first place, we have a clear conflict with respect to some of the provisions of the bill that are duplicative or inconsistent with the provisions of the Consent Decree. We would either have to—either those would be tailored, changed up here in Congress or we would have to go to the court to seek some change in our responsibilities in light of the changed legislative picture.

Mr. NIELSON. Do you think Congress should wait until after April 18?

Mr. WILLENS. It seems to me at a minimum, Congressman, that the subcommittee should wait to see whether there is a Final Consent Decree. Judge Gesell, among other things, acts promptly as was evidenced the last time we were before him.

There will be a hearing on April 18 and we would expect within 1 or 2 weeks that the judge would issue an opinion deciding whether to approve the Consent Decree or to reject it, and if rejected on what terms.

We ask the subcommittee at the very least to defer judgment about the bill until that point.

Mr. FLORIO. Would the gentleman yield on that point?

Mr. NIELSON. Yes, but I would like Mr. Cutler's response. He acted like he had something to say on that issue.

Mr. CUTLER. I was only going to add, Mr. Nielson, that if Congress should enact this bill in its present form——

Mr. NIELSON. Before April 18——

Mr. CUTLER. Before or after April. I don't know what the judge will do on April 18. He might very well go ahead and still enter his decree.

We would pursue our judicial remedies from any order the Commission issued pursuant to this bill, including the Constitutional arguments we have respectfully submitted to you. If we fail in seeking to overturn those orders or set aside those orders, we would certainly go back to the Consent Decree court and say to it that a new situation has developed and now we don't know whether it is fair to ask us to comply with the provisions of this decree such as the provisions on training and other very heavy expenditures which we are about to make which the Commission has just been empowered to change unilaterally within 1½ years.

Mr. NIELSON. I will yield to the chairman on the premise that he will yield back.

Mr. FLORIO. I just want some opinion, particularly from Mr. Cutler, the distinguished constitutional scholar. Are the deficiencies in this proposal as you have described them, from your constitutional standpoint, are they inherent in the legislation or is it as a result of the interaction between the court settlement and the legislation.

To put it a different way, if there was never any action brought by the Consumer Product Safety Commission and therefore no agreement, would you be up here making the same argument that somehow the bill is inherently constitutionally deficient?

Mr. CUTLER. On the first of our arguments, Mr. Chairman, that this is in effect a legislative trial—a trial by legislature in which the legislature determines that the Bishop of Rochester's cook shall be boiled in oil and that A shall pay damages to B, we would still have that argument.

Mr. FLORIO. You wouldn't have that argument if there was no action.

Mr. CUTLER. We would have that argument regardless of whether there was a pending case. We think the constitution means—the justices have said many times—that Congress is supposed to act by general rule. Congress is not supposed to determine that A violated such and such——

Mr. FLORIO. There is no reference in Mr. Barton's bill to defendants. We are talking about anyone who is similarly situated prospectively or retroactively.

Mr. CUTLER. There are five manufacturers of three-wheel vehicles. This is the law——

Mr. FLORIO. No, Mr. Cutler——

Mr. CUTLER. Three-wheeled vehicles made by five manufacturers.

Mr. FLORIO. I understand what you are saying. You are obviously trying to be an advocate for your cause. You are not telling us that because there happens to be five manufacturers, now that the Congress is prohibited from broad-based public safety legislation, that would impact 15, if there were 15, or two if there were only two.

Mr. CUTLER. Let me give you an example of something that probably isn't going to happen. Congress might very well be able to pass a law saying that no more handguns may be sold because of the great danger that they present to human life, notwithstanding the NRA.

Congress could not pass a law in our judgment, saying that every handgun manufacturer who has sold a handgun over the last X years shall make a refund to the buyer of that handgun because handguns are now ruled out and they are no longer saleable in the market.

We submit you cannot do that constitutionally.

Mr. FLORIO. I don't know if you have heard of the Superfund legislation.

Mr. Cutler. Yes, I have heard the Superfund legislation. The Superfund legislation leaves it open to a hearing before an administrative tribunal and eventually to a court to decide whether the chemical itself, the waste is poisonous, whether that company put it there, whether it bears any responsibility. It is an entirely different thing, just as the black lung legislation is an entirely different thing.

It still is a factual hearing as to whether that particular coal miner contracted black lung as a result of working at that mine.

Mr. Florio. You are making the argument that notwithstanding the existence of the settlement and the interaction between this legislation and the settlement, the nature of the activity of this bill—the proposed activity—makes it beyond the pale of constitutionality?

Mr. Cutler. With respect to the refund. With respect to the other provisions such as the one saying the Commission shall, despite its settlement on what the training program will be, et cetera in the court decree, we say there you are violating a second principle, which is to legislate a rule of decision for a particular case. This is the so-called Klein Doctrine.

Mr. Florio. I respect your legal skill. I thank the gentleman.

Mr. Nielson. I would like to ask some questions having to do with your distributors and any of those attorneys can answer this one.

Some of the elements of the preliminary Consent Decree are binding, whether the final decree is agreed to or not; is that true?

Mr. Willens. Yes, that's true, Congressman.

Mr. Nielson. Which are those elements that are binding on you, even with no decree?

Mr. Willens. Among the most important ones, Congressman, is the undertaking to stop distributing new three-wheel ATV's.

Mr. Nielson. That will happen in any case?

Mr. Willens. Yes. And it has been under implementation over the past several weeks, and to offer to repurchase or provide credits for the dealer inventories of those vehicles.

In addition, there's an undertaking in the preliminary Consent Decree to put out a poster of a safety nature and information that has been done and remains in effect. The age recommendations that are changed under the preliminary Consent Decree is another one of those provisions that we affirmatively undertake to enforce.

Mr. Nielson. The man who had been killed 4 years ago—and his widow received it. Is that the sort of thing that you are sending out to all the people that have bought your equipment?

Mr. Willens. Yes, there was a requirement under the preliminary Consent Decree to send out what was called a safety alert that set forth in negotiated language, a statement of the risk and hazards associated with the product.

Mr. Nielson. Can we depend on dealers to comply with the dictates of the settlement?

Mr. Willens. We think they are——

Mr. Nielson. What has been your experience with dealers; do they comply with the regulations quite well?

Mr. Willens. Our experience to date Congressman, and we are relying here on reports of a CPSC monitoring function, demonstrated that there was a high record of compliance by the distributors and their dealers in implementing the program under the preliminary Consent Decree.

Mr. **Nielson**. Would they have a better chance of complying if you as the parent companies could agree with the decree that is granted than if you disagree with it?

In other words, would they have more difficulty complying with something the legislature imposed than what this decree is, for example?

Mr. **Willens**. That's hard to judge, Congressman.

Mr. **Nielson**. I am just wondering. Will they cooperate with the Congress as well as with the judge if that so happens?

Mr. **Willens**. The dealers are independent businessmen and we think——

Mr. **Nielson**. Don't they——

Mr. **Willens**. We think that they will comply with the law and we think they will comply with the court.

Mr. **Cutler**. The distributors will comply with any valid law wherever it comes from.

Mr. **Nielson**. Even if the parent companies are unhappy?

Mr. **Cutler**. Even if we are unhappy.

Mr. **Nielson**. Mr. Cutler, you made some very good statements on page three. You didn't read it, so I am going to read it. Talking about the settlement process is an indispensable element of effective law enforcement and here's the key one. Who is going to make a litigation settlement with the Government if the Government can unilaterally alter the settlement will—as H.R. 3991 would do and retroactively increase the price of settling the case.

Would you like to elaborate on that statement, please, because that's my chief argument with my colleague on my right.

Mr. **Cutler**. I think it speaks for itself, Mr. Nielson.

Mr. **Nielson**. It's well written, but I want you——

Mr. **Cutler**. It is quite true we have invoked the separation of powers. You are the Congress and you are not bound by what the Executive or the independent Agency you created did. You are free to write a new law.

But I think you have to bear in mind that the settlement process is extremely important to law enforcement. If Congress would get in the habit of changing settlements after they are made by legislating on a point that the Government wanted in the settlement but gave up in order to get something else, that point has to be given by the defendants anyway after they had made their bargain.

People are going to think twice about making a settlement. That is all there is to the point, and it simply is not a legal issue, it's a judgment issue that we submit——

Mr. **Florio**. Would the gentleman yield on that point and I will be happy to give you more time.

Mr. **Nielson**. Yes.

Mr. **Florio**. That same argument can be used in the context of Mrs. Lavelle having previously tried to effectuate settlements in the environmental field that were terrible if not bordering on criminal.

Then you could say that the Congress never had the authority or shouldn't have gone into effect and changed the law as we did as a direct result of understanding what weak settlements were previously being entered into.

Your principle can be flip flopped around. I am saying that the authority should be exercised to send out the message that good settlements—obviously there is some dispute here through the course of the day as to whether this is a good settlement or not. I am not sure that one should be arguing policywise that the Congress somehow has to forfeit its right to enact legislation because somebody has entered into a settlement.

You can flip it around and make the point that the right of the Congress to impose good, strong statutory standards is the best thing to induce good settlements. Do you concede that there is an argument to be made?

Mr. CUTLER. I certainly concede that, Mr. Chairman. We don't want to get into your satisfaction or dissatisfaction with the CPSC, the Agency that you created. I don't think that this is like the Mrs. Lavelle case.

Whatever happened here, it was certainly done in good faith. There is certainly nothing criminal that has ever been suggested. This is a judgment call that the Commission has made.

If you want to tighten the law so—in a prospective manner because you think it was a bad settlement and you don't want anymore settlements like that to be made, of course, you are free to do that. That is a judgment call for future cases. To change the settlement that was made is something else, and that's what this bill does.

Mr. Barton's letter or the committee letter in its statement of the bill and everything that was said this morning is that you want to legislate a change in this decree. There, we think there is a judgment call, a question of judgment as to what kind of signal that you will be sending as those very effective witnesses this morning said, what message you will be sending about settling tax cases, about settling anti-trust cases.

We aren't always going to be in a situation in which the majority in Congress of the day is unhappy with the administration of the day. We have to have an administration, it's got to make its decisions and they certainly have enough oversight by the Congress in the course of making them.

Once they are made, it seems to me to legislate a change in the settlement is something that you should think carefully about.

Mr. NIELSON. Mr. Chairman, it will be your desire, I assume, to dismiss the panel after this round?

Mr. FLORIO. It would be——

Mr. NIELSON. I would then yield so that Mr. Dannemeyer can ask his questions before we have to go to the floor.

Mr. FLORIO. Your time has expired.

Mr. NIELSON. I would like to submit a number of questions in writing as well.

Mr. DANNEMEYER. Thank you, Mr. Chairman. I have a letter from the Department of Justice dated yesterday. I would like to ask unanimous consent that it be put in the record if I may, dealing with this issue.

Mr. FLORIO. Without objection.

[The letter follows; Justice Department brief retained in subcommittee files.]

Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC, March 16, 1988.

Hon. William E. Dannemeyer,
House of Representatives, Washington, DC.

Dear Congressman Dannemeyer: I am writing to acknowledge receipt of your letter to the Attorney General dated March 14, 1988. Given that we received this letter late on March 15, the evening before your hearing on H.R. 3991, it is obviously impossible for the Department of Justice to analyze that proposed legislation fairly and fully or to address the important issues you raise before that hearing. The difficulty of such a short time for response is made more acute by the fact that the attorneys who would undertake these analyses are completely absorbed in our cases against the distributors of all-terrain vehicles (ATV's). As soon as the press of those matters allows, we will consider the issues you raise and respond as promptly as possible.

Though we cannot give you our analysis of the impact of this bill on the Final Consent Decrees recently submitted to the court in those cases, we can state unequivocally that the Department of Justice believes that those Decrees, and the comprehensive safety package they impose on the industry, is a full, effective, and responsible response to the problems of ATV safety at this time. As you know, after considerable study and evaluation of the evidence concerning ATV-related deaths and injuries, the Consumer Product Safety Commission identified the underlying problems, formulated what they believed to be a complete package of remedies, and sought Justice Department assistance to secure that relief in court. The CPSC did not determine that any measure that would take the machines off the market was necessary at that time.

As we said in our papers filed with the court, the proposed settlement of our litigation "encompasses every element of relief directly related to consumer safety that was sought by the Government." Having achieved the goals set by the CPSC on behalf of consumer safety without time-consuming and costly litigation, and the industry having capitulated to our demands without testing our cases in court as they had every right to do, we fail to see why the safety program set out in those Decrees should not be given a chance to work.

The marketing, consumer notification, and consumer training framework imposed on the ATV industry by these Decrees are designed to ensure that consumers are aware of the risks associated with ATV use and, should they choose to do so, are fully trained in the techniques for safe ATV riding. Again, as we said in our court papers, we have not seen "any reason to believe that a refund, in addition to the notification relief, is necessary to coax informed consumers into taking steps, appropriate in their judgment, to protect themselves and their families, whether that is careful use of the machine or abandonment of it altogether."

For your information, I have enclosed a copy of our brief in support of the Final Consent Decrees that we filed on March 14, 1988.

Sincerely,

Thomas M. Boyd,
Acting Assistant Attorney General.

cc: James Florio, House of Representatives, Washington, DC.

Mr. **Dannemeyer**. I will quote just from a small part of it. Again, as we said in our court papers, we have not seen any reason to believe that a refund in addition to the notification relief is necessary to inform consumers into taking steps appropriate in their judgment to protect themselves and their families whether there is careful use of the machine or abandonment of it all together.

I have been advised that there is a class action suit that has been filed on behalf of some people who have purchased these ATV's; is that correct?

Mr. **Willens**. Yes.

Mr. **Cutler**. Three.

Mr. **Willens**. There are five.

Mr. **Dannemeyer**. The point that I want to establish is that there is nothing in this settlement decree that can effect the ability of these private litigants to pursue their cause of action to seek a refund in any way, is there?

Mr. **Willens**. No, Congressman, there isn't. And in fact, the plaintiffs in the five suits—three in Philadelphia and two in Illinois—are seeking the opportunity to have a repurchase and refund arrangement on behalf of all owners of three-wheel ATV's——

Mr. **Dannemeyer**. How do——

Mr. **Willens**. They have their legal rights to pursue the complaints that you have heard about here today, and we think that's one of the reasons why H.R. 3991 is unnecessary.

Mr. **Dannemeyer**. How did Mel Belli from San Francisco ever miss out on this opportunity?

Mr. **Willens**. We haven't heard from him yet, Congressman.

Mr. **Dannemeyer**. Don't hold your breath.

The point that I think that needs to be said that it is controversial as to whether or not a refund should have been ordered. This Member of Congress candidly is reluctant to impose my judgment on the actions of the Commission that appear to have been entered into in good faith.

Once we begin doing that, we are substituting our judgment for an existing Commission that appears to have entered into this settlement in good faith. I think the existence of this cause of action in the private sector will be pursued with all diligence and certainly, the fact that the settlement is going to be used in one form or another with a trier of fact at some stage I suspect.

Whether or not they are successful in that remains to be seen. With all due respect to my colleague from Texas and his legislation to in effect undue this settlement that has been made, I think it is premature.

I think that we should wait until Judge Gesell looks at it. I don't think the judge, as distinguished and as tough as he is, has the authority under the law to order a refund and I don't think that is his prerogative. I think that he may disagree with me, but I don't think it is.

The Commission has that authority and maybe that's a question and I'm not sure. If the Commission chose not to do it, I question whether this distinguished Federal judge should go beyond what has been agreed to and order that on top of what is in the settlement.

Consequently, I think that at the end of the year—candidly, it surprises me that you distinguished members of the bar only abated their ability to order a refund for a year. I am not sure I understand what is meant by the term substantial new evidence. That's always an interesting new terms in the law. That is about which people can differ for long periods of time. Only time will tell as to whether that substantial new evidence comes along.

Mr. **Cutler**. Mr. Dannemeyer, contrary to what has been suggested, the Government has good lawyers on its side and they were tough negotiators and that was the best that we could get.

Mr. **Dannemeyer**. Thank you very much. I have no further questions.

Mr. **Florio**. Let me thank this panel. I reject the observation of one of the staff people that with all this high priced legal talent here today, perhaps this could have financed the refund provision.

I am sure that the industry got its money's worth today. I do appreciate your participation here today.

Mr. **Cutler**. I hope that you won't go so far as to order refunds by lawyers when they lose a case.

Mr. **Florio**. We will not do that.

The committee stands adjourned.

Mr. **Barton**. Mr. Chairman, could I make one final statement—I want to commend this panel for appearing. We can't be educated if we don't know what the issues are, and I appreciate that. I would quibble a little bit with at least one statement. I would prefer to say add or strengthen to the Consent Decree. I am not, in any way, attempting to undo it. We could debate that a little bit.

I want to thank you, Mr. Chairman, for personally being here the entire time.

Mr. **Florio**. It has been my pleasure.

Mr. **Barton**. I look forward to pursuing this matter legislatively.

Mr. **Florio**. The committee will stand adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

[The following documents and responses to subcommittee questions follow:]

CFA
Consumer Federation of America

April 20, 1988

The Honorable James J. Florio
Chairman, Subcommittee on Commerce,
  Consumer Protection and Competitiveness
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Florio:

We are writing to request that the enclosed brief be included in the record for the March 16, 1988 hearing on H.R.3991. This brief was submitted to the Court by Consumer Federation of America (CFA), the American Academy of Pediatrics, Public Citizen, the American Public Health Association, U.S. Public Interest Research Group and Frederic Booth, as *amici*, in opposition to the final approval of the Consent Decree in the case of *United States v. America Honda Motor Co., et al.*

The brief sets forth the objections of CFA, *et al*. to the terms of the decree and its failure in particular, to protect children who are at an especially high risk of death or injury from all-terrain vehicles.

We ask that this brief and the accompanying exhibits (L-Z) be included in the hearing record as further clarification of our concerns about the terms of the decree and the need for legislative action to fully address the hazards associated with ATVs. (Please note that exhibits A-K were submitted by *amici* with previous pleadings in this case.)

Thank you for your attention to this matter.

Sincerely,

Susan A. Weiss
Legislative Representative

NOTE: The brief and accompanying exhibits are retained
in the subcommittee files.

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April 21, 1988

OUR FILE NO.

James J. Florio, Chairman
Subcommittee on Commerce, Consumer
  Protection and Competitiveness
U.S. House of Representatives
Room H2-151
House Annex No. 2
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with conversations with your staff, we are pleased to provide herewith a memorandum for inclusion in the printed official record of the March 16, 1988 hearing on H.R. 3991 before the Subcommittee on Commerce, Consumer Protection, and Competitiveness. This memorandum was prepared by Professor Paul Bator, a constitutional law scholar, former Deputy Solicitor General of the United States, and of counsel with Mayer, Brown & Platt in Chicago.

Professor Bator was requested by the four major distributors of all-terrain vehicles -- American Honda Motor Co., Inc., Yamaha Motor Corp., U.S.A., U.S. Suzuki Motor Corp., and Kawasaki Motors Corp., U.S.A. -- to evaluate the constitutionality of H.R. 3991. It is hoped that his evaluation, as an important supplement to other expressed legal views, will be of benefit to the subcommittee in considering the proposed legislation.

Yours very truly,

Mark L. Gerchick
of PAUL, HASTINGS, JANOFSKY & WALKER

Enclosure

April 15, 1988

MAYER, BROWN & PLATT

MEMORANDUM ON THE CONSTITUTIONALITY OF H.R. 3991, THE ATV USER SAFETY AND EQUITY ACT

We have reviewed House of Representatives Bill 3991, the ATV User Safety and Equity Act. This bill, if enacted, would represent a major intrusion into the judicial process. It seeks to impose a congressional judgment with respect to the liability of five ATV distributors under the law; that judgment would effectively revise and reverse the judgment of the district court as set forth in the consent decree in United States v. American Honda Motor Co. The bill would encroach upon the proper roles of the judicial and executive branches, and would deprive the manufacturers of all-terrain-vehicles of their rights guaranteed by the Due Process Clause of the Fifth Amendment.

This memorandum examines the substantial constitutional concerns raised by the bill.

INTRODUCTION

H.R. 3991 represents an attempt to have Congress, rather than a court or an administrative agency, apply an existing statute to the past conduct of a small, determinate group of persons engaged in business. It constitutes a legislative verdict after trial by legislature. The bill disregards the procedures Congress wisely (and necessarily, in light of the Due Process Clause) mandated under the Consumer Product Safety Act (the "Act"), and overturns the result reached in a lawsuit brought by the Government under the Act. If enacted, the bill would be an unprecedented encroachment upon the judicial and the executive branches, and a complete denial of the procedural protections required by the Constitution.

Under the Act, all manufacturers and distributors of consumer products are entitled to a trial-type hearing and to judicial review before it is definitively determined that they have violated the Act and must suffer sanctions. It is pursuant to these provisions of the Act that the Government instituted proceedings against the five ATV distributors; it is those proceedings that eventuated in the consent decree entered by the district court. H.R. 3991 seeks to undo these proceedings by singling out the 5 ATV distributors and imposing on them a legislative finding of guilt and a legislative order requiring the distributors in effect to pay millions of dollars of damages, all without any evidentiary hearing and any judicial review whatever.

The bill begins by declaring that all 3-wheel all terrain vehicles ("ATVs"), including those previously manufactured and sold, are "banned hazardous products" under §8 of the Act.1/ The statute ordinarily allows such a declaration only after a rulemaking proceeding by the Consumer Product Safety Commission: the bill eliminates the need for any such proceedings by simply declaring, contrary to fact, that the Commission has issued a rule:

> Sec. 2(a). Ban. -- For purposes of the Consumer Product Safety Act, 3-wheel all terrain vehicles shall be considered banned hazardous products for which a rule was promulgated under section 8 of such Act . . . .

The bill then dictates the remedy that is to follow from that declaration (a remedy that is not provided under §8 2/):

> Sec. 2(b). Refund. -- The manufacturers of 3-wheel all terrain vehicles shall provide to persons who
>
> > (1) before the date of the enactment of this Act, purchased 3-wheel all terrain vehicles, and
> >
> > (2) return the vehicles to the manufacturer in accordance with regulations of the Consumer Product

---

1/ Section 8 of the Act is codified at 15 U.S.C. §2057.

2/ The Act provides that rules promulgated under §8 shall be in accordance with §9, 15 U.S.C. §2058. The latter section provides, in part, that rules promulgated thereunder "shall be applicable only to consumer products after the effective date [of the rule]." 15 U.S.C. §2058(d)(1). Therefore, it appears that a declaration under §8 that a product is a "banned hazardous product" would only have prospective effect, and would not support any remedy as to previously-manufactured products.

> Safety Commission under paragraph (3), a refund in an amount determined under such regulations.

The refund remedy that is thus required by the bill can ordinarily be imposed by the Commission under the Act only following either the trial of an action brought by the Commission against the manufacturers in district court or a full adjudicatory hearing before the Commission. The bill--with regard to this one product--would take over the roles of the courts and the Commission, and would completely deny the affected manufacturers the fair procedures mandated by the Act and the Due Process Clause.

In addition to usurping the roles of the courts and the Commission and depriving the manufacturers of the fair procedures provided by the Act, the bill would further encroach upon the judiciary by reversing the judgment agreed upon in United States v. American Honda Motor Co. 3/ The consent decree in that case forbids the future sales of 3-wheel ATVs; requires manufacturers to provide training and safety information; and permits the Commission to administratively to seek additional relief if new and substantial evidence indicates such relief is warranted. It does not require manufacturers to offer refunds at this time. The bill seeks to have Congress act as an appellate court, overturning the district court judgment and imposing a remedy not found necessary by the parties or the court.

By assuming the roles of the courts and the Commission, by overturning the judgment of the district court, and by denying the manufacturers the procedural protections provided by the Act, H.R. 3991 contravenes the constitutional separation of powers and denies the manufacturers the due process of law guaranteed by the Fifth Amendment.

3/ United States v. American Honda Motor Co., Civil Action No. 87-3525 (D.D.C.). The parties agreed to and filed a preliminary consent decree that was approved and entered by the district court on December 30, 1987. The parties have since agreed upon and filed a final consent decree, and are awaiting final court approval.

Separation of Powers

The Framers of the Constitution were gravely concerned that the legislative, executive and judicial powers of the government not be intertwined. In Madison's words:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, or few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

The Federalist No. 47 (J. Madison), at 313 (Modern Library ed. 1937). Later in the same paper Madison quoted from Montesquieu, whom he called the "oracle" on the subject:

> "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*".

Id., at 315 (emphasis in the original).

In order "to assure, as nearly as possible, that each branch of government would confine itself to its assigned responsibility," *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 951 (1983), the Framers' Constitution carefully delegated the federal legislative power to Congress (Art. I, §1), the executive power to the President (Art. II, §1), and the federal judicial power to the Supreme Court and to such "inferior" federal courts as Congress shall constitute (Art. III, §1).

In exercising its legislative powers, Congress has often found it necessary to "commit something to the discretion of the other departments." *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 46 (1825). Congress can choose to legislate precisely, or to leave substantial discretion to the other branches to determine whether a general law applies in a given situation. *Hampton v.*

United States, 276 U.S. 394, 406-07 (1928). But once Congress establishes the law, it is for the executive branch to administer and the judicial branch to apply. TVA v. Hill, 437 U.S. 153, 194 (1978). "[I]t is a breach of the National fundamental law . . . if by law [Congress] attempts to invest itself with either executive power or judicial power." Hampton v. United States, supra, 276 U.S. at 406.

With these general principles in mind, we can consider H.R. 3991. The bill would contravene the constitutionally-mandated separation of powers in two different ways. First, by acting as an appellate court and overturning the decree in United States v. American Honda Motor Co., the bill would directly usurp the proper role of the courts in ongoing litigation. Second, even if there were no pending litigation, the bill seeks to have Congress do a task reserved by the Constitution to the court: to determine the liability of specific parties for past conduct and to assess the proper remedy. As Justice Powell noted:

> Functionally, the [separation of powers] doctrine may be violated in two ways. One branch may interfere impermissibly with the other's performance of its constitutionally assigned function. See Nixon v. Administrator of General Services, 433 U.S. 425, 433 (1977); United States v. Nixon, 418 U.S. 683 (1974). Alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another. See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952); Springer v. Phillipine Islands, 277 U.S. 189, 203 (1928).

Immigration and Naturalization Service v. Chadha, supra, 462 U.S. at 963 (Powell, J. concurring). H.R. 3991 violates the separation of powers doctrine in both ways.

A. Congress Cannot Tell the Courts How To Apply the Law to a Given Case

The bill first violates the separation of powers by overturning the consent decree in United States v. American Honda Motor Co. and thus "interfer[ing] impermissibly with the [court's] performance of its constitutionally assigned function."4/ The Supreme Court has long recognized that Congress cannot reverse judicial decisions with which it may disagree:

> [N]o decision of any court of the United States can, under any circumstances, in our opinion, agreeable to the Constitution, be liable to a reversion [sic], or even suspension, by the Legislature itself, in whom no judicial power of any kind appears to be vested, but the important one relative to impeachments.

Hayburn's Case, 2 U.S. (2 Dall.) 409, 413 (1792).5/ As Madison explained,

> It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers.

The Federalist No. 48 (J. Madison), supra, at 321.6/

In United States v. Klein, 80 U.S. (13 Wall.) 128, 146 (1872), the Supreme Court held unconstitutional a statute that would have required the courts to dismiss for want of jurisdiction certain pending property claims against the United States. The claims had been brought by Confederate agents who prevailed before the Court of Claims because they had been pardoned by the President and were therefore no longer considered disloyal and incapable of recovery. Congress disagreed with the effect the Court of Claims had given to presidential pardons, and passed the "jurisdictional" statute to reverse that court's decisions.

4/ Immigration and Naturalization Service v. Chadha, supra, 462 U.S. at 963 (Powell, J., concurring).

5/ See also Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 113-14 (1948).

6/ See also United States v. O'Grady, 89 U.S. (22 Wall.) 641, 647-48 (1874).

The Supreme Court held that Congress cannot "prescribe rules of decision to the Judicial Department of the government in cases pending before it." By that, the Court certainly did not mean that Congress cannot make general changes in the law while a case is pending, and have that new law, if otherwise valid, applied to the case. The authority of Congress to make such changes had long been accepted.[7] What Congress cannot do is to impose on the courts its own decision as to how the law should be interpreted and applied in a specific pending or decided case. Congress can change the law, but it cannot tell the courts how to apply and interpret the law in a particular case; Congress may not, under the pretext of new legislation, act as an appellate tribunal to reverse specific prior or pending judicial decisions.[8]

The Supreme Court most recently examined the separation of powers rationale involved in Hayburn's Case and Klein in United States v. Sioux Nation of Indians, 448 U.S. 371 (1980). The case involved an Act of Congress authorizing the Court of Claims to consider the merits of a suit against the United States that the court had previously dismissed on res judicata grounds. The Court summarized the separation of powers concerns of Hayburn's Case and Klein as follows:

> There are two objections that might be raised to the constitutionality of this [Act], each framed in terms of the separation of powers. The first would be that Congress impermissibly has disturbed the finality of a judicial decree by rendering the Court of Claims earlier judgments in this case mere advisory opinions. See Hayburn's Case, 2 Dall. 409, 410-414 (1792) . . . . The objection would take the form that Congress, in directing the Court of Claims to reach the merits of the [case], effectively reviewed and reversed

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[7] See, e.g., United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103, 110 (1801); cf. System Federation No. 19 v. Wright, 364 U.S. 642 (1961). And see P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 316 n. 4 (2d. ed 1973).

[8] See Pope v. United States, 323 U.S. 1, 8-9 (1944). See also L. Tribe, American Constitutional Law 50 (2d ed. 1983).

> that court's [previous judgments]. Such legislative review of a judicial decision would interfere with the independent functions of the judiciary.
>
> The second objection would be that Congress overstepped its bounds by granting the Court of Claims jurisdiction to decide the merits of the . . . claim, while prescribing a rule of decision that left the court no adjudicatory function to perform. See United States v. Klein, 13 Wall., at 146 . . . .

448 U.S. at 391-392. Similarly, Justice Rehnquist, dissenting in Sioux Nation, noted:

> Article III vests "the judicial Power . . . of the United States" in federal courts. Congress is vested by Art. I with *legislative* powers, and may not itself exercise an appellate-type review of judicial judgments in order to alter their terms, or to order new trials of cases already decided.

448 U.S. at 427 (emphasis in original).

In Sioux Nation, the majority of the Court in fact upheld the statute, but on the narrow ground that Congress, acting for the United States under its constitutional power to provide for the payment of the nation's debts, could waive a procedural defense raised in a case against the United States, much like any other party to a lawsuit can waive technical defenses against itself.[9] But the Court made it clear that Congress could not "review[] the merits of the Court['s] decisions [or] interfere with the finality of its judgments." Id. at 407. Factfinding, and the "application of generally controlling legal principles to those facts," must be left to the courts. Id.

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[9] See also Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. 421 (1855), where the Court upheld a congressional statute providing that a bridge--previously held to be an obstruction of navigation--was not such an obstruction. Like Sioux Nation, Wheeling Bridge represents a Congressional decision to have the Government *forego* a right won in litigation; this is obviously vastly different from a Congressional decision imposing new sanctions and penalties on a private party.

H.R. 3991 clearly violates the constitutional doctrine examined in *Hayburn's Case*, *Klein* and *Sioux Nation*. These cases establish that Congress may not revise or modify court judgments and decrees it disagrees with, at least if the effect is to impose a new burden or sanction. It cannot decide -- as H.R. 3991 would have it decide -- that the result reached by the court applying an existing law to particular parties "is not . . . entirely adequate,"10/ and then step in to mandate a different and more severe result. The language and effect of H.R. 3991, as well as the statement made by its sponsor in introducing the bill, make it clear that the central purpose of H.R. 3991 is to overturn the consent decree in *United States v. American Honda Motor Co.* and to substitute the judgment of Congress for that of the court.11/ An appellate court, following the existing law and

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10/ 134 Cong. Rec. H 486 (Feb. 24, 1988) (statement of Rep. Barton of Texas, introducing H.R. 3991). See Note 10, *infra*.

11/ The sponsor of H.R.. 3991, Representative Barton, made the following statement when he introduced the bill:

> *Mr. BARTON of Texas*: Mr. Speaker, today I introduced the ATV User Safety and Equity Act, a bill to declare three-wheel all terrain vehicles to be banned hazardous products under the Consumer Product Safety Act, to direct the Consumer Product Safety Commission to promulgate consumer product safety rules for all terrain vehicles, and for other purposes.
>
> . . .
>
> The Department of Justice, representing the Consumer Product Safety Commission, has filed suit against the ATV manufacturers. The ATV manufacturers and the Department of Justice have agreed upon a preliminary consent decree and are continuing negotiations to arrive upon a final consent decree.
>
> The preliminary consent decree takes many steps in the right direction including requiring ATV manufacturers to provide warnings to purchasers and training programs for riders. Although too long in the making, the consent decree is a major victory for

(Cont'd)

providing full procedural protection to the parties, may be able to take such a step, but Congress is not an appellate court and cannot act as one.

B. Congress Cannot Assume the Role of The Judicial and Executive Branches

As the foregoing demonstrates, H.R. 3991 violates the constitutional separation of powers in that it attempts to substitute Congress's view of the law and the facts for those of the court in United States v. American Honda Motor Co. There is yet another way in which the bill violates the constitutional separation of powers. Even in the absence of a judgment or any ongoing litigation, Congress cannot usurp the role of the courts or the executive branch; it cannot "assume[] a function that more properly is entrusted to another [branch]."12/ The Constitution provides that "[t]he judicial power of the United States shall be vested in" the federal courts, and that the President "shall take care that the laws be faithfully executed." Congress cannot assume for itself either of those powers; yet that is just what H.R. 3991 would have Congress do.

As Chief Justice Marshall said in 1810, "[i]t is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other

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> consumers.
>
> However, the consent decree is not an entirely adequate solution and does not address the important question of what remedies should be available to persons who purchased dangerous ATV's in the past and would like to return them. I introduced the ATV User Safety and Equity Act to protect these ATV owners.
>
> . . .

134 Cong. Rec. H 486 (February 24, 1988). This statement makes it quite clear that the intent--as well as the effect--of H.R. 3991 is to overturn the consent decree.

12/ Immigration and Naturalization Service v. Chadha, supra, 462 U.S. at 963 (Powell, J., concurring).

departments." Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 136 (1810). When it enacted the Consumer Product Safety Act in 1972, Congress prescribed the general rules in the area of product safety. It defined several different categories of hazardous products, including "banned hazardous products," "imminent hazards," and "substantial product hazards," and gave the federal government the authority to take a variety of remedial actions with regard to such products. But, quite properly and necessarily, it left it to the executive branch agency--the Consumer Product Safety Commission--to execute the new law, and in particular to decide whether a particular product warranted action under the law, and what action (or remedy) it warranted. And it left the final step--the decision of whether the product did, in fact, come within the statute and whether the remedy sought by the Commission was proper and within the agency's discretion--to the federal courts or to the adjudicatory processes of the Commission subject to judicial review. H.R. 3991 reflects dissatisfaction with how the other branches have enforced and interpreted the Act in this one particular instance, and it seeks in this one case to usurp the roles of those other branches. That the Constitution does not permit.

H.R. 3991 acts very much like the statute held unconstitutional in Immigration and Naturalization Service v. Chadha, supra. In Chadha, "[t]he House [of Representatives] did not enact a general rule; rather it made its own determination that six specific persons did not comply with certain statutory criteria. It thus undertook the type of decision that traditionally has been left to other branches." Id., at 964-65 (Powell, J., concurring). Similarly, if it enacted H.R. 3991, Congress would be making its own determination that one of the products of the five distributors fits the statutory criteria of the Act for designation as a "banned hazardous product" and for imposition of a refund remedy. Once again Congress would be undertaking "the type of decision that traditionally has been left to other branches."

"Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought." TVA v. Hill, supra, 437 U.S. at 194. When it enacted the Consumer Product Safety Act, Congress established the general legal rules governing product safety. Now, H.R. 3991 would have Congress assume the roles of the executive and judicial branches by administering and enforcing that law in this one specific instance. This violates the constitutional separation of powers.

The concerns that led the Framers to preclude the exercise of executive or judicial power by the legislature are also dealt with in the Bill of Attainder Clause.13/ A legislative act singling out specific or readily identifiable individuals or entities and imposing punitive sanctions on them for past conduct is a prohibited bill of attainder.14/ The clause prohibits Congress from acting as lawmaker, prosecutor and judge. Chief Justice Warren explained the purpose of the Bill of Attainder Clause in United States v. Brown, 381 U.S. 437, 442 (1965):

> The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply--trial by legislature.

Recently, the United States Court of Appeals for the District of Columbia Circuit invalidated a statute intended to prevent one known company from obtaining a waiver of the Federal Communications Commission rule prohibiting "cross-ownership" of both a television station and a daily newspaper in the same market. The court held that the law violated the Equal Protection Clause and the First Amendment, but it noted that the constitutional concerns were similar to those underlying the Bill of Attainder Clause:

> Congress's exclusive focus on a single party implicates values similar to those behind the constitutional proscription of Bills of Attainder. See U.S. Const. art. I, §9, cl. 3. The safeguards of a pluralistic political system are often absent when the legislature zeroes in on a small class

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13/ U.S. Const., Art I, §9, cl. 3.

14/ Selective Service System v. Minnesota Public Interest Research Group, 468 U.S. 841, 847 (1984); United States v. Brown, 381 U.S. 437, 447 (1965); United States v. Lovett, 328 U.S. 303, 315 (1946).

of citizens. Justice Jackson's statement, concurring in Railway Express Agency v. New York, 336 U.S. 106 (1949), is a classic:

> The Framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation. Id., 112-113.

News America Publishing, Inc. v. FCC, No. 88-1037, slip op. at 28 (D.C. Cir. March 29, 1988).

Although there is a question whether the refund remedy required by H.R. 3991 qualifies, technically, as the kind of punitive sanction covered by the Bill of Attainder Clause itself, the D.C. Circuit's opinion in News America Publishing, Inc. v. FCC reaffirms Chief Justice Warren's proposition: the Bill of Attainder Clause is only one manifestation of a more general and basic separation of powers concern: the legislature may not single out a particular person or a small determinate group and impose special penalties on them. H.R. 3991 exemplifies the very evils the doctrine of separation of powers was designed to guard against.

Procedural Due Process

Even if we assume that Congress could constitutionally assume the role of a court or an administrative agency -- an assumption demonstrated above to be untenable -- it would nevertheless be clear that it could not do so in the manner of H.R. 3991. The bill dispenses with all of the procedural protections provided by the Consumer Product Safety Act by simply declaring that 3-wheel ATVs are "banned hazardous products" as to which the Consumer Product Safety Commission has promulgated a rule under section 8 of the Act, and then imposing the refund remedy. The manufacturers of the vehicles are not given any opportunity to present evidence and legal argument to an impartial decisionmaker. By dispensing with the judicial or trial-type administrative hearing normally required under §12 and §15 of the Act, H.R. 3991 would deny to the five distributors of 3-wheel ATVs the due process of law guaranteed by the Fifth Amendment.

In deciding whether an adjudicatory hearing is required, the relevant question is not who (or which branch) is making the decision, but what kind of decision is being made.15/ Congress cannot, by fiat, decide that no process is due.

> It is manifest that it was not left to the legislative power to enact any process which might be devised. The [Due Process Clause] is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process "due process of law" by its mere will.

Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272, 276 (1855).

The Due Process Clause of the Fifth Amendment requires a hearing when the government applies the law to particular individuals, and in doing so deprives them of their property. When the government acts in a truly legislative fashion, and enacts broad, generally-applicable rules governing future conduct or rights, individual hearings are not required. Bi-Metallic v. Colorado, 239 U.S. 441, 445-46 (1915). But when it applies the law in particular cases, and determines the disputed facts on which the legal liability of individuals rests, those individuals must be given a hearing at which they can submit evidence and present legal argument. Londoner v. Denver, 210 U.S. 373 (1908).16/

15/ As we point out in the p[revious section of this memorandum, the question of who (or which branch) is critical to the separation of powers concerns raised by the bill.

16/ See also, United States v. Florida East Coast Railway Co., 410 U.S. 224, 245 (1973).

Londoner and *Bi-Metallic* both involved due process challenges to the imposition of property taxes in Denver. In *Londoner*, a local legislative body apportioned a street paving tax among property owners according to the extent that each property had benefited from the improvement. The Supreme Court held that the property owners were entitled to a hearing. *Bi-Metallic* involved an order by a state administrative agency increasing the valuation of all taxable property in Denver by 40%. The Court held that the Due Process Clause did not require individual hearings.

The critical distinctions between *Londoner* and *Bi-Metallic* were the size and the determinacy of the groups of persons affected by the government action, the impact of the government action on those persons, and the relevance of particularized facts in each case. Justice Holmes, writing for the Court in *Bi-Metallic*, emphasized that in *Londoner* "[a] relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds, and it was held that they had a right to a hearing." 239 U.S. at 446. In *Bi-Metallic*, on the other hand, the government action applied to a large, indeterminate group. As Justice Blackmun more recently noted:

> "[T]he case for due process protection grows stronger as the identity of the persons affected by a government choice becomes clearer; and the case becomes stronger still as the precise nature of the effect on each individual comes more determinately within the decisionmaker's purview."

O'Bannon v. Town Court Nursing Center, 447 U.S. 773, 800-801 (1980) (Blackmun, J., concurring in the judgment).17/

Londoner and *Bi-Metallic* have come to be considered the sources of the distinction between adjudicative facts and legislative facts. Professor Davis defined the distinction as follows:

> Adjudicative facts usually answer the questions of who did what, where, when, how, why, with what motive and intent;

17/ See also L. Tribe, *American Constitutional Law* 667-669 (2d ed. 1988).

> adjudicative facts are roughly the kinds of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are the general facts which help the tribunal decide questions of law and policy and discretion.

2 K. Davis Administrative Law Treatise 413 (1979). Legislative facts are those that Congress and other government bodies determine and consider when they enact general rules governing future conduct. Adjudicative facts are usually determined by courts or adjudicatory administrative agencies, and they are the particularized facts considered in determining the consequences of the past behavior of specific persons. When the government--any part of the government--determines adjudicative facts, due process requires a hearing.

H.R. 3991 would apply the Consumer Product Safety Act to a small number of known persons (i.e., the five distributors of 3-wheel ATVs). Clearly, these distributors would be "exceptionally affected"18/ by the bill. Perhaps most importantly, the bill expressly or implicitly makes particularized factual findings required under the Act with regard to such things as the hazard presented by the manufacturers' vehicles, the effectiveness of the various alternative remedies permitted under the Act, and the cost effectiveness of the refund remedy.19/ In light of these factors, the Due Process Clause requires that the persons affected by H.R. 3991 be given a fair hearing. But H.R. 3991 would determine the disputed facts, interpret the law, choose the remedy and greatly affect a small and determinate group without any fair hearing at all.

It is useful to contrast H.R. 3991 with the procedures normally required under the Act to impose a refund remedy on the manufacturers of allegedly hazardous products. Sections 12 and

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18/ Bi-Metallic v. Colorado, supra, 239 U.S. at 446.

19/ Cost-effectiveness is an important inquiry under this statute. See American Textile Manufacturers Institute v. Donovan, 452 U.S. 490, 511-12 n.30 (1981).

15 of the Act20/ authorize the CPSC and the district courts to issue orders requiring manufacturers of hazardous products to offer refunds to purchasers. Section 15 authorizes the Commission to determine that products present "substantial product hazards." Once it makes that determination, the Commission may require the manufacturers to take corrective action:

> (d) If the Commission determines . . . that a product . . . presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer . . . to take whichever of the following actions the person to whom the order is directed elects:
>
> > (1) To bring such products into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.
> >
> > (2) To replace such product with a like or equivalent product . . . .
> >
> > (3) To refund the purchase price of such product (less a reasonable allowance for use . . .).

15 U.S.C. § 2064(d). Even though the remedy imposed by this subsection is somewhat less onerous than that imposed by H.R. 3991,21/ the statute does require that the Commission give the manufacturers a trial-type hearing:

> (f) An order under subsection (c) or (d) of this ection may be issued only after a hearing in accordance with section 554 of Title 5 . . . .

20/ 15 U.S.C. §§2061 and 2064.

21/ H.R. 3991 does not give the manufacturers the three options set out in §15. Instead, it requires a refund.

15 U.S.C. §2064(f).22/ Thus Congress determined in 1972 when it enacted the Act that a trial-type hearing was required before the Commission could impose even an elective refund remedy.

Section 12 of the Act provides additional procedural protections. In order to have a product determined to be an "imminently hazardous product," the Act requires the Commission to file an action against the manufacturer in federal district court. The court has the authority to impose a refund remedy, but the manufacturer is given all of the procedural protections of a full trial before an impartial judge. At trial--or at a trial-type hearing under §15--the manufacturers would be given the opportunity to introduce relevant and useful evidence as to the extent of the hazard presented by 3-wheel ATVs, the potential effectiveness of the alternative remedies available under the law and included in the consent decree, the cost-effectiveness of the refund remedy and its effect on the manufacturers, their distributors, employees and customers. The manufacturers would also be able to rebut evidence offered by the Commission. In short, they would be offered a fair opportunity to make their case and they would have the final decision made by an impartial, fully-informed decisionmaker.

Congress found the procedural protections provided under §12 and §15 to be necessary when it enacted the Consumer Product Safety Act in 1972, and Commission followed those procedures with regard to ATVs. H.R. 3991, on the other hand, would disregard the fair procedures Congress itself established in the Consumer Product Safety Act and would impose the burdensome refund remedy without any hearing and without the opportunity for judicial review that is available under the Act. By failing to afford the distributors an opportunity for a fair hearing, H.R. 3991 would violate the Due Process Clause.

Substantive Due Process and Takings

The constitutional defects of H.R. 3991 under the Due

22/ "[S]ection 554 of Title 5" is the section of the Administrative Procedures Act that sets out the requirements for adjudicatory hearings.

Process Clause and the constitutional separation of powers are so severe that it is hardly necessary to suggest that there might be yet other problems. But a substantial case can be made against the bill on substantive due process and takings grounds.23/

H.R. 3991 operates within the framework of the existing Consumer Product Safety Act, and mandates the imposition of a refund remedy in a manner that we have shown violates the separation of powers and the Due Process Clause. But if we look at the bill somewhat differently--as establishing a new legal rule, and applying that rule retrospectively--serious substantive due process and takings concerns emerge. Powerful arguments can be made that this kind of retrospective economic regulation is always a taking in violation of the Fifth Amendment.24/ In its most recent case evaluating retroactive economic legislation, the Supreme Court upheld a law that imposed liability on companies that withdrew from multiemployer pension plans. *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717 (1984). In order to prevent anticipatory withdrawals while the bill was being debated in Congress, the drafters made the withdrawal liability retroactive to the date on which the bill was publicly submitted to Congress for consideration.25/ In upholding the statute, the court made it clear that retroactive legislation is subject to an additional constitutional inquiry beyond that to which ordinary economic legislation must submit. In order to survive that inquiry, the retroactivity of the law itself must serve a valid purpose.26/

In *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, the concern about anticipatory withdrawals while the bill was pending was seen as justifying the retroactivity. But it is hard to see how the retroactive application of H.R. 3991 can be said to

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23/ The Fifth Amendment provides in part that "private property [shall not] be taken for public use, without just compensation."

24/ See R. Epstein, *Takings: Private Property and the Power of Eminent Domain* 255-59 (1985).

25/ *Id.*, 467 U.S. at 723.

26/ *Id.*, 467 U.S. at 730.

promote the government's safety concerns. The government could prohibit the future use of 3-wheel ATVs--as it has prohibited their sale--and that would fully accomplish any rational safety concern. The only additional purpose of giving retroactive relief would be to give a windfall to the past willing purchasers of 3-wheel ATVs. That, we submit, is not a purpose the takings clause permits.

H.R. 3991, in singling out the five ATV distributors for harsh retroactive liability, goes substantially further than retroactive legislation previously upheld by the Supreme Court 27/, and interferes with the justifiably settled expectations of the manufacturers in light of the consent decree. The manufacturers negotiated a settlement of the lawsuit against it in good faith, and made substantial, costly concessions to the government. Now Congress seeks to step in and use the consent decree as a starting point for yet further penalties.28/ The harshness, unfairness and exorbitant nature of this measure raises substantial due process and takings concerns.

Conclusion

All of the constitutional problems with H.R. 3991 reduce ultimately to one mischief: the bill is an attempt to do through legislative fiat what can validly be done only through judicial proceedings or adjudicatory administrative proceedings subject to judicial review. By trying to circumvent the other branches of government and to bypass the procedural requirements of the Act, H.R. 3991 violates the constitutional separation of powers, the Due Process Clause, and the Takings Clause. And it does so quite unnecessarily. The Consumer Product Safety Commission has aggressively pursued the manufacturers of 3-wheel ATVs, and has compelled them to agree to cease all sales of the vehicles and to sponsor training and educational programs and materials for ATV owners. The Commission even retains the right to seek additional

---

27/ See, e.g., Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976).

28/ The provisions of H.R. 3991 also raise substantial problems under the Equal Protection Clause.

administrative remedies if new substantial evidence indicates they are warranted. With fair and constitutional procedures accomplishing their purpose, it would be foolhardy for Congress to step in with an unconstitutional and unfair measure of its own.

MAYER, BROWN & PLATT

/s/

Paul M. Bator
John P. Wilson Professor of Law
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March 11, 1988

Honorable James J. Florio
Chairman
Subcommittee on Commerce,
Consumer Protection and
Competitiveness
H2-151 HOB Annex 2
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to our attention that on March 16, the Subcommittee on Commerce, Consumer Protection, and Competitiveness will hold a hearing on "All-Terrain Vehicles" (ATV's).

We would like to share with you a position statement that the American Academy of Orthopaedic Surgeons has published on this issue. As physicians we believe that we not only have an obligation to provide our patients with the best possible care, but we also have an obligation to educate our patients and policy makers regarding recognized hazards.

The Academy would appreciate this position statement being made a part of the hearing record.

If we can be of assistance to you, please do not hesitate to contact Mr. Nicholas Cavarocchi in our Washington office.

Sincerely,

Thomas B. Dameron, Jr.

Thomas B. Dameron, Jr., M.D.

Enclosure

American Academy of Orthopaedic Surgeons
"A Position Statement"
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Contact: Mark W. Wieting

All-Terrain Vehicles

All-terrain vehicles (ATVs) are three- or four-wheeled motorized vehicles designed primarily for off-the-road use. They have handlebars like a motorcycle, and the rider straddles the body of the vehicle. With large, soft tires, ATVs have a relatively high center of gravity. Some can reach speeds of 50 mph.

No state or local license is required to operate an ATV, most of which are used for recreation. There are no national safety standards for their construction and only a few states have issued regulations for their use. ATVs are often operated by children, some as young as age five.

ATVs have been involved in an alarming number of injuries and deaths, particularly among young people. Numerous groups have questioned the inherent danger of the design of these vehicles, and in June 1986, the United States Consumer Products Safety Commission issued a "Safety Alert" on ATVs.

In light of statistics that show a trend of increasing injuries and deaths resulting from the use of ATVs, the American Academy of Orthopaedic Surgeons considers ATVs to be a significant public health risk.

Over the past five years, more than 550 deaths related to ATV use have been recorded. More than 40 percent of the dead were children 16 years of age or younger.

From 1984 to 1985, the number of ATV-related injuries treated in emergency departments in the United States increased from 63,900 to 85,900. During the first six months of 1986, 45,000 ATV-related injuries were treated in emergency departments. Nearly one-third of these injuries (30 percent) involved children between the ages of five and 14.

The American Academy of Orthopaedic Surgeons supports the July 1986 recommendation of the United States House of Representatives Committee on Government Operations to the Consumer Products Safety Commission that it issue a recall on three-wheeled all-terrain vehicles.

The three-wheeled ATV is inherently unstable. When the operator executes a sharp turn at even moderate rates of speed, the high center of gravity of the vehicle, the short wheel base, and the short turning radius combine in many cases to cause the vehicle to turn over. Studies have shown that 75 percent of accidents involving three-wheel ATVs result from tipping and overturning. The rider may be thrown from the vehicle or crushed beneath it as it rolls.

3-all-terrain vehicles

Only one person at a time should ride an ATV. Adding a passenger to the ATV increases the propensity of the vehicle to tip or turn over, because the passenger, to a significant extent, increases the high center of gravity. In almost a third of ATV accidents (31 percent), more than one person was riding the vehicle.

The American Academy of Orthopaedic Surgeons urges its members to alert their patients to the dangers of ATVs.

Although these vehicles may give the appearance of being safe, stable recreational vehicles, they have been demonstrated to be otherwise, both by analysis of their physical properties and by alarming and increasing statistics reporting injuries and deaths to riders of ATVs. Orthopaedic surgeons are urged to encourage parents to protect their children by choosing other recreational activities that are more appropriate for children than the operation of motorized vehicles.

October, 1987

REPORT AND RECOMMENDATIONS OF THE NAAG ATV TASK FORCE

EXECUTIVE SUMMARY

In December, 1987, the National Association of Attorneys General (NAAG) created a Task Force to study the hazards of all terrain vehicle (ATV) use and to recommend a course of action to the Attorneys General. This report summarizes the work of the Task Force to date, and recommends actions to be taken in the immediate future.

In short, the Task Force has found that ATVs are imminently and unreasonably hazardous. The Task Force has also concluded that steps taken thus far by the federal government are inadequate, and that further action is needed.

The report covers the the following areas:

1. Ban on three-wheel ATVs;
2. Ban on current promotion and sale of ATVs for use by children;
3. Recall and refunds to consumers who have bought ATVs;
4. The need for meaningful performance standards;
5. Restrictions on ATV advertising;
6. Adequate warnings to potential riders of the hazards of ATVs;
7. The safety verification form proposed by the Consumer Product Safety Commission (CPSC);
8. State legislative initiatives;
9. Federal legislative initiatives.

This report is not all-inclusive. Silence on any particular issue does not necessarily mean that it is not of concern to the Task Force.

INTRODUCTION

On December 29, 1987, Missouri Attorney General William L. Webster, Chair of the NAAG Consumer Protection Committee, appointed this Task Force to study ATVs and the hazards posed by them and to recommend a course of action to the Attorneys General. Tennessee Attorney General W. J. Michael Cody is chair of the Task Force. The other Task Force members are:

California Attorney General
John Van de Kamp

Connecticut Attorney General
Joseph I. Lieberman

Illinois Attorney General
Neil F.Hartigan

Massachusetts Attorney General
James M. Shannon

Michigan Attorney General
Frank J. Kelley

Minnesota Attorney General
Hubert H. Humphrey III

Missouri Attorney General
William L. Webster

New York Attorney General
Robert Abrams

Texas Attorney General
Jim Mattox

Wisconsin Attorney General
Don J. Hanaway

Under our federal system of government, the Consumer Product Safety Commission (CPSC) has primary responsibility to protect the citizens of all states from dangerous and hazardous products. The Task Force believes that the CPSC has not fully met its obligation in the case of ATVs. While the CPSC complaint against the industry acknowledges that ATVs are imminently and unreasonably hazardous, the Preliminary Consent Decree of December 30, 1987 (Decree) has several deficiencies which, if left uncorrected, will result in death and injury which could otherwise be prevented.

The Task Force has been unable to discover any other hazardous consumer product sold which has been responsible for more deaths and injuries. In the past five years alone, over 900 people have died, and 330,000 people have been injured in ATV-related accidents. Nearly half of those killed and injured have been children. Stronger action than is proposed in the Decree has been taken by the federal government following far fewer deaths associated with the use of other consumer products.

Although the CPSC has the primary duty for insuring the safety of consumer products, Attorneys General must also act when their citizens are victimized. As the chief legal officers of the states, the Attorneys General have the responsibility of enforcing state consumer protection laws.

This Task Force has studied the ATV issue in depth. The recommendations made in this report present our views on how effective action might be taken at the federal and state levels. Our chief concerns center on the importance of: 1) permanently banning three-wheeled and child-sized ATVs; 2) prohibiting the use of ATVs by children under 16 years of age; 3) instituting a consumer refund program for all ATVs; and 4) developing performance standards. We urge your immediate consideration of the recommendations that follow.

I. BAN ON THREE-WHEELED ATVs

The Task Force finds that current three-wheeled ATVs have design defects which render them imminently and unreasonably hazardous consumer products. Accordingly, the Task Force recommends an immediate ban on the sale of all three-wheeled ATVs.

ATV design defects include lack of an adequate suspension system, lack of an effective rear-wheel differential suitable for variable terrain, a high center of gravity in relation to the dimensions of the vehicle, and tires which contribute to machine tipping. This combination of faulty design characteristics produces steering and balance problems which cause ATV riders to lose control of the vehicle.

The most significant handling and control problems occur in turns and on slopes. In turning an ATV, the rider must shift his or her body weight to the outside of the turn, while at the same time leaning into the turn. In moving up a slope, the rider must keep his or her body weight forward over the ATV. During either a turn or a climb, a slight change in terrain, including a bump or a hole, can cause the ATV to flip over or roll over before the rider has an opportunity to respond and regain control.

These ATV control problems are most acute for untrained and inexperienced riders. However, even experienced riders can lose control of the three-wheeler in turns or uphill climbs, or when encountering changes in terrain. In sum, no amount of training and experience can protect the rider from the inherent dangers involved in operating a three-wheeled ATV.

The safety problems are compounded by the fact that three-wheeled ATVs have been promoted as solid, stable and easy-to-operate vehicles. The three-wheeled configuration and the large tires create the illusion of stability, and provide no hint of the difficult and complex reactions required to control the ATV.

The Preliminary Consent Decree

The Decree provides that the manufacturers shall halt the marketing of all three-wheeled ATVs, and the distribution and sale of three-wheeled ATVs to retail dealers. In addition, the manufacturers agree to offer to repurchase only *new* three-wheeled ATVs from the inventory of retail dealers. The Stop-Sale and Repurchase provisions expire if a final consent decree is not entered within forty-five days of the entry of the preliminary consent decree. Should a final decree be entered, any future distribution and sales of three-wheelers by the ATV manufacturers may be permitted to the extent such three-wheelers meet future standards acceptable to the CPSC.

The requirement that the ATV manufacturers offer to repurchase new three-wheelers from dealers is not binding on the dealers, since they are not bound by or named in the lawsuit. The Decree does not prohibit distributors and dealers from selling their remaining *new or used* inventories of three-wheelers to the public. Nor does the Decree require the manufacturers to repurchase three-wheelers from consumers. The issue of consumer refunds is discussed in more detail below.

Recommendations

The Task Force supports the provision in the Decree which prohibits the ATV manufacturers from marketing, selling or distributing current three-wheelers. However, the Task Force concludes that additional action is required to eliminate the problem of three-wheelers. In particular, the Task Force recommends that retail dealers be required to sell their current new and used three-wheel inventories back to the manufacturers and be prevented from making any further sales of all three-wheeled ATVs to the public.

2. PROMOTION AND SALE OF ATV FOR USE BY CHILDREN

The Task Force concludes that children are not able adequately to handle ATVs. Therefore, adult-sized three or four-wheeled ATVs should not be sold for use by children under 16 and child-sized ATVs should be banned entirely.

The CPSC Complaint

The Complaint alleges that, each day, millions of individuals, a large number of them children under the age of 16, are unwittingly exposed to the risk that, as a result of their operation of ATVs, they will be involved in an accident in which they will either die or suffer a severe personal injury such as quadriplegia, paraplegia, a ruptured organ, or a skull or bone fracture. The Complaint further alleges that the risk of harm presented by ATVs is substantially magnified when they are operated by children under 16. We agree.

The Complaint correctly recognizes that ATVs are unique, complex, and dynamically unstable vehicles, requiring quick perception, decision and reaction times, and precise rider manipulation which is neither instinctive nor easily mastered by a person of ordinary skill. There is virtually no margin for error in the operation of ATVs because of their peculiar operating characteristics. The penalty for making the smallest miscalculation may be death or catastrophic injury.

The Decree Is Not Adequate

Although the Complaint clearly recognizes the dangers of ATVs to youthful operators, the Decree fails to deal with this issue. The Decree requires the defendants to represent that ATVs with engine sizes of 70 cubic centimeter displacement (ccd) up to 90 ccd should not be used by children under 12, and ATVs with engine sizes of greater than 90 ccd should not be used by children under 16. These provisions do not adequately address the problem. According to the Decree, children under 12 are permitted to ride an ATV. The Decree reserves CPSC's right to proceed separately under the Federal Hazardous Substances Act against ATVs which are marketed for children under the age of 12. The Task Force believes that any negotiated settlement should deal directly with the problem as acknowledged in the Complaint.

Greater Risk To Children

Children under 16 who operate ATVs are at an even greater risk of injury and death than adults. They do not have the judgment, constant attentiveness, and high degree of skill to integrate the ATV with varying environments. They also lack the counter-intuitive skills necessary to make split-second decisions that could mean the difference between life and death. Typically, children under the age of 16 lack the cognitive abilities, physical size and strength, motor skills, experience and perception to operate an ATV safely. All of this, combined with a tendency toward higher risk-taking attitudes than most adults and an assumption of a posture of exaggerated independence, inhibits children under 16 from recognizing and operating ATVs within their skill levels.

Nearly half of the ATV-related fatalities are children under 16 year old. Twenty percent are under 12 years old. More than half of the injury victims are children under 16 years old. Since 1982, approximately 400 ATV-related deaths and over 150,000 hospital emergency-room-treated injuries involved children under 16.

Children under 16 can not operate cars in most states, and there is no reason they should be operating ATVs. ATVs are not toys. They are vehicles that in inexperienced and immature hands produce death and catastrophic injury.

3. RECALL AND CONSUMER REFUNDS

All persons should be entitled to return ATVs to the manufacturers for refunds. Refunds should be available for any three or four-wheeled ATV and not be limited to ATVs which are banned.

Basis for refunds

Consumer refunds are warranted for a number of reasons. Manufacturers failed to disclose the hazards of ATVs and, in fact, affirmatively misrepresented the characteristics of ATVs. For example, ATVs were marketed as recreational vehicles for young children. In fact, ATVs pose a particular hazard to children under 16 who account for nearly half the ATV-related deaths. Advertisements show maneuvers of ATVs, such as jumps and riding at high speeds on rough terrains. In fact, such maneuvers are inherently dangerous and beyond the ordinary skills of most riders.

Consumer refunds should be provided because they are an incentive to remove ATVs from use. With fewer ATVs in use, the number of deaths and injuries will be reduced.

In addition, consumers who have already purchased an ATV had no notice or inadequate notice of the risk of death and severe injury posed by ATVs. Had they known, many consumers may not have bought them. Once they learn of the dangers, many consumers are probably not likely to use them. Their resale value may well be, and should well be, minimal. The consumer should be allowed to recoup undeserved losses of this kind.

Furthermore, manufacturers have profited by their unfair and deceptive practices in marketing ATVs. They should not be permitted to retain profits obtained from a deceived public, and obtained from the sale of inherently dangerous products.

Past recall programs

Recent recalls for repair or refund of consumer products have been instituted on the basis of far fewer than the 900 deaths and 330,000 injuries related to ATVs. Examples are noted in the 40th Report by the Committee on Government Operations, July 16, 1986, (House Report 99-678) on ATV use. In 1978, the Ford Pinto was recalled after 61 deaths, following a determination by the National Highway Traffic Safety Administration that the vehicle was unsafe because the fuel tank could explode when hit from the rear. About 1.4 million Pintos had been marketed.

In 1977, CPSC declared a ban and recall of TRIS-treated apparel and fabric for children's sleepware. TRIS, a chemical fire-retardant, had been linked as, though not conclusively proven to be, carcinogenic and mutagenic to humans.

In 1980, Proctor & Gamble Company voluntarily withdrew its Rely brand tampons. The Center for Disease Control had reported that a study of 50 women showed an association between usage of the tampon and toxic shock syndrome (TSS), a life-threatening illness. Twenty-five deaths since 1975 had been attributed to TSS.

Authority for recall and refund

Under the Consumer Product Safety Act (CPSA), the CPSC has the direct authority to obtain refunds of the purchase price of a product. The CPSC lawsuit is brought pursuant to Section 12 of the CPSA on the grounds that ATVs are an "imminently hazardous consumer product" — one which "presents imminent and unreasonable risk of death, serious illness, or severe personal injury." In such a case, CPSC may seek, among other things, an order of a refund for a product. In its complaint, CPSC did seek a consumer refund for all three-wheeled ATVs and all adult-sized four-wheeled ATVs purchased for use by children under 16 years of age.

However, there is no consumer refund provision in the federal settlement. The settlement entitles only dealers to sell-back new three-wheeled ATVs to the manufacturers.

Obviously, consumers should also be entitled to a refund for three-wheeled ATVs. Furthermore, consumers also bought four-wheeled ATVs under false representations and without notice of the hazards. Therefore, consumers should be entitled to refunds for four-wheeled ATVs as well as three-wheeled ATVs.

4. PERFORMANCE STANDARDS

A mandatory consumer product safety standard consisting of performance requirements for ATVs must be developed. The performance standard must be one which results in changes in design of currently or previously manufactured ATVs and must address the following vehicle characteristics:

- lateral stability
- longitudinal stability
- transient performance
- braking performance
- suspension performance
- speed capability

The Task Forces concludes that an ATV mandatory performance standard should be developed and implemented within one year.

Analysis of Decree

The Decree includes a declaration that the CPSC has already commenced its rulemaking process for the establishment of a mandatory standard. It also provides that the ATV industry defendants attempt, in good faith, to negotiate an agreement on voluntary standards within four months of the court's approval of a final decree. The Decree then specifically permits the reintroduction of three-wheeled ATVs in the event that those vehicles meet either the mandatory or voluntary standard, whichever is adopted.

The Task Force notes two major problems with the Decree's provision on standards. First, the Decree refers only to "standards" and not to standards respecting performance requirements. Based on the CPSA's definition of a standard, the requirement of this provision could be satisfied if the CPSC adopts a safety standard which requires ATVs to be marked with or accompanied by certain warnings or instruction, but does not include performance requirements. 15 U.S.C. §2056(a). Second, the settlement does not specifically declare that a mandatory standard (performance or other) will be promulgated by the CPSC if the parties fail to reach agreement on a voluntary standard four months from the date of the final decree. Thus,it appears that if the parties do not reach agreement, there may possibly be no adoption of any standard by the CPSC, notwithstanding the fact that it may have commenced the rulemaking process.

Recommendation For Action On a Performance Standard

Because the states may be bound to accept any performance standard promulgated by the federal government, the Task Force believes that it is critical for the states to participate in the development of that standard.

The CPSC has already started work on an ATV performance standard. It has met and corresponded with representatives from the ATV industry. Under the Decree, the CPSC is required to furnish the industry defendants with a draft of a standard. The Task Force supports participation by the Attorneys General in the CPSC performance standard setting process.

The Task Force also supports development of a mandatory performance standard by the U.S. Congress. In the event that legislation is sponsored concerning an ATV performance standard, NAAG should designate Attorneys General to testify either in support of or opposition to the performance requirements proposed, depending on the nature of the standard.

In the event that the CPSC and Congress fail to adopt a standard, the Task Force also supports individual state adoption of legislation which includes a mandatory performance standard. Our analysis of the CPSA indicates that once the CPSC has adopted a standard, however, individual states may be precluded from doing so under the Act's preemption provision, 15 U.S.C. §2075, unless the state standard adopted is identical to that of the CPSC.

5. ADVERTISING

From the outset, the industry has advertised and marketed ATVs as *all* terrain vehicles, showing riders of all ages performing daring feats in apparent perfect safety. The Task Force believes that the advertising campaigns of the various manufacturers have falsely represented the characteristics of ATVs, with the direct result that misinformed consumers have bought ATVs by the hundreds of thousands, believing them to be a safe, reliable, and fun method of transportation.

ATVs are not safe. They are not reliable. They are not "fun" toys. They are in fact inherently dangerous vehicles which take a great deal of skill and knowledge to ride, and which can kill and maim even the most experienced rider.

Accordingly, the Task Force concludes that the advertising of these machines must be substantially changed to ensure that no one who buys or rides an ATV is deceived into believing that ATVs are anything other than dangerous machines to be ridden only at the risk of serious injury or death. The Task Force supports the Decree's provisions that the industry develop ATV advertising guidelines and engage in a corrective advertising campaign to alert consumers to the skills needed for, and the potential hazards and risks associated with, ATV riding. We recommend the following:

ATV Advertising Guidelines

The guidelines contemplated by the Decree are intended for future ATV image advertising. Image advertising includes the types of terrain on which ATVs are ridden, speeds at which they should be driven, ATV stability, need for training, and appropriate ages of riders. There must be ample opportunity for comment by the states, the federal government, consumer and safety groups, rider groups, and other interested parties.

The following basic precepts should be adopted for ATV advertising:

- NO riding which requires expert skills.
- NO person should be under 16 years of age.
- NO representation that an ATV is easy to operate.
- NO aggressive recreational behavior.
- NO risk-related performance, such as driving in water, wheels leaving the ground, or any other stunt.
- NO claim that an ATV is usable on all terrains.
- SHOW all protective equipment required by law or recommended by the industry (such as helmets, eye protection, gloves, boots, and heavy clothing).

A warning of the risks of ATV use should be immediately included in all advertisements. The warning must be meaningful, substantial, clear and conspicuous. This will vary by advertising medium At a minimum, all broadcast commercials should contain a warning such as that used in the ATV Safety Alert contained in the Decree:

"An ATV is not a toy and may be dangerous to operate."

This statement, or a similar one, should be made in every commercial. It should not be contained only in a super which is visible for just a few seconds.

Print advertisements should contain that language, as well as considerably more detailed warnings. Print lends itself to more detailed information about the risks of ATVs, and that opportunity must be taken.

Corrective Advertising

The Decree provides that the industry must develop a corrective advertising campaign addressing the potential hazards and risks associated with ATVs. Presumably, this is in recognition of the fact that past advertising has deceptively promoted ATVs as safe.

Corrective advertising must tell consumers unqualifiedly that an ATV is a dangerous machine.

The warnings contained in the ATV Safety Alert are a good starting point. These, or stronger statements must be emphasized in such a campaign.

Care must be taken to ensure that this corrective advertising campaign does not become a puff piece for the industry or for ATVs. The sole message should be the potential risks and hazards of ATVs.

6. WARNING & NOTICES AT POINT OF SALE

In the opinion of the Task Force, all consumers must be adequately warned of the serious risk of death and injury associated with ATV use, prior to any purchase of an ATV. At a minimum, these warnings and notices should be made through the use of labels, hanging tags and owner manuals. Further, the language used in these warnings must be much stronger than that employed in the past by the Industry. The scope of these warnings and notices should be as follows:

Warning labels

The Task Force endorses the language of the Decree requiring the industry to develop safety warning labels. Additionally, the Task Force believes the language regarding format, location, durability, and readability of the labels is acceptable. However, the Task Force is extremely concerned over the exact language used in the labels. For example, we believe all labels should be captioned with an insignia such as the skull and crossbones. The skull and crossbones is universal and easily understood. In addition, that insignia had been previously used on ATVs by at least one company that had been in the business of leasing them to the general public. The labels must also contain the detailed warnings set forth in the Decree. It must be stressed, however, that in order for these warning labels to be effective, they must, in no uncertain terms, inform potential consumers that ATVs are an extremely dangerous vehicle requiring special riding skills, which, if not followed, could likely lead to severe injury or death.

Hang tags

The Task Force believes that the language in the Decree requiring the industry to distribute vehicle hang tags for all ATVs is another adequate method, when combined with other methods, of warning consumers of the hazards associated with ATV use. However, the hang tags used by the industry in the past have been wholly inadequate because they failed to adequately warn consumers of the risks associated with ATV use. To be effective, the hang tags must contain all the warnings set forth on the vehicle warning labels and consumer verification form. Again, we suggest that a skull and crossbone insignia be used on all hang tags. Furthermore, the hang tags should be attached with some sort of material which must be cut off prior to removal, as opposed to the strings used in the past by the Industry.

Owner's manual

As in the case with hang tags, notices and warnings contained in the owner's manuals for ATVs have failed to warn consumers adequately of the risks and dangers associated with ATV use. The warnings set forth in the Decree are a step in the right direction. However, the key to any warning is the use of appropriate language. The language cannot be nearly as soft as the industry has used in the past, but should effectively alert and caution the consumers as to the dangers and hazards associated with ATV use.

In addition to the warnings already required by the preliminary injunction, the owner's manual must also include warnings regarding the following:

- minimum age of 16
- prohibition against double riding
- prohibition against excessive speeds
- prohibition against aggressive recreational use including doing any wheelies, jumps or other stunts
- prohibition against operating an ATV without taking an approved safety course
- prohibition against use of drugs or alcohol while driving an ATV
- prohibition against using the ATV on roads and other paved surfaces
- prohibition against using an ATV without adequate safety equipment
- disclosing that failure to follow all warnings and notices contained in the owner's manual can cause the ATV to roll over and/or lead to death or serious bodily injury

The Task Force recognizes that there is a limit to the number of warnings that may be included on labels and hanging tags. However, this does not apply to owner's manuals because they allow for detailed descriptions and explanations. Hence, not only should the owner's manuals list the various warnings and notices, they should in detail, discuss both why the warning exists in the first place and what the consequences are for failing to follow the particular warnings or notices.

7. SAFETY VERIFICATION FORM

The Task Force concludes that the safety verification form mandated by the Decree is seriously flawed. As part of the Decree, manufacturers are required to obtain signatures of ATV purchasers on an ATV safety verification form. The form warns customers about certain dangers faced by users of ATVs.

The major problems with the safety verification form are:

1) The major effect of the safety verification form may be to allow manufacturers to avoid liability for sale of a defective product. The Decree and the form itself should include a stipulation that the customer's signature on the safety verification form or proof that the salesperson explained the verification material does not constitute a waiver of liability or evidence of comparative negligence or assumption of the risk of death or injury.

2) There is no agreement as to when the safety verification form is read to the purchaser. It would not appear to be a violation of the Decree if the manufacturers ask the dealers to supply this information after the purchase has been completed. The information should be read to potential consumers prior to any consumers' commitment to purchase. The warnings should be given before the commitment and the consumer should be advised to read and think about the warnings and the dangers of ATV use before deciding whether or not to purchase the ATV. It should be provided to the consumer at the time the consumer expresses an interest in purchasing the ATV.

3) The form does not give sufficient information. If the form is to be used, it should be more complete. The significant warnings the settlement requires the manufacturers to supply to *previous* purchasers should be included in the safety verification form provided to prospective purchasers. The warnings to previous purchasers include valuable numerical death and disability information and warnings about potential paralyzing injury. Specifically, manufacturers are required to state that:

- Over 900 people, including many children, have died in accidents associated with ATVs since 1982.
- Many people have become severely paralyzed or suffered severe internal injuries as a result of accidents associated with ATVs.
- Thousands of people have been treated in hospital emergency rooms every month for injuries received while riding an ATV.

The warnings to *prospective* purchasers do not contain these facts.

The form now required does not give sufficient use information to consumers; for example, the form instructs the purchaser not to drive an ATV at excessive speeds. That term is not defined. Most ATVs do not even have speedometers. Consumers are not likely to be influenced by this statement since no product should be driven at excessive speeds. The purchaser should be informed that ATVs are dangerous at any speed and that the danger increases with increased speed.

4) The most glaring deficiency on the form as it is now, is its failure adequately to advise consumers that adherence to all of the warnings will not eliminate the risk of death and injury associated with ATV use.

8. STATE LEGISLATIVE INITIATIVES

The Task Force recommends that any state legislation should include at least the following requirements:

1. Set age limits on operators, prohibiting use by children under 16 years of age (possibly with a limited exception for agricultural use);

2. Require all ATV riders to complete a mandatory rider safety and training program prior to operation of an ATV. States may wish to refrain from mandating any specifics of a training program until there has been an opportunity to examine the effectiveness of the training program requirement contained in the Decree. In any event, the Task Force believes the training program set forth in the Decree should be free and available to anyone who has purchased an ATV in the past;

3. Impose operational requirements on operators, such as use of helmets and other protective gear and prohibitions on carrying of passengers;

4. Require operators to obtain liability insurance; and

5. Require operators, manufacturers and dealers to register all ATVs.

9. FEDERAL LEGISLATIVE INITIATIVES

There are at least two bills pending in the U.S. Congress addressing ATVs. As a result of the federal settlement, it is very likely that additional legislation will be introduced in upcoming months. The Task Force urges your support of Congressional initiatives, concurrent with state jurisdiction, that will aid in the achievement of the recommendations contained in this report.

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HARRY W. CLADOUHOS

April 19, 1988

Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer Protection
and Competitiveness
H2-151 Annex 2 H.O.B.
Washington, D.C. 20515

Dear Chairman Florio:

I am writing on behalf of American Suzuki Motor Corporation to request that the attached material be entered into the record for the March 16 hearing on all-terrain vehicles ("ATV").

During the hearing, certain witnesses and Subcommittee Members questioned whether the ATV industry had violated the Final Consent Decree's ("FCD") prohibition on lobbying against state legislation which is consistent with the FCD's age recommendations and training requirements. In an effort to respond to these serious allegations, I sent the attached material to Tennessee Attorney General Michael Cody, who testified at the hearing. The ATV industry, through SVIA, has supported state ATV safety legislation since 1983, when the SVIA was created. SVIA continues to support state safety legislation which is consistent with the Final Consent Decree. Inclusion of the attached material into the hearing record should dispel any doubts about the industry's commitment to state ATV safety legislation.

We appreciate your efforts to ensure that the record fully reflects the industry's position on state legislation and we thank you for your consideration.

Sincerely,

Harry W. Cladouhos

Harry W. Cladouhos

HWC/jb

Enclosure

cc: Honorable William E. Dannemeyer

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HARRY W. CLADOUHOS

April 11, 1988

Honorable Michael Cody
Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Dear Attorney General Cody:

I am writing to you on behalf of American Suzuki Motor Corporation. During the March 16 hearing on H.R. 3991, on which you presented testimony, Representative Joe Barton inserted into the record a copy of Dr. Janine Jagger's letter to you regarding the lobbying activities of the Specialty Vehicle Institute of America ("SVIA") in the Commonwealth of Virginia. I am writing to respond to her allegations and to address your concerns about SVIA's position on state ATV legislation.

The ATV industry, through the SVIA, has supported state ATV safety legislation since 1983, when the SVIA was created. Since that time, SVIA has developed, distributed and promoted the adoption of model state legislation to establish minimum age recommendations, helmet usage requirements, operator training certification and other useful safety laws. Unfortunately, few states have enacted such comprehensive ATV safety legislation. Through the SVIA, the industry continues to support state ATV legislation that is consistent with the Final Consent Decree ("FCD") and, in fact, plans to modify its model legislation to conform with the FCD. Enclosed is a copy of the model safety legislation that SVIA has been promoting on behalf of the industry (Attachment #1).

Because of the industry's efforts to promote state legislation, we are concerned about allegations, such as those contained in Dr. Jagger's letter, suggesting that the ATV industry does not support state safety legislation. These allegations are based on reported information that recently the industry, through SVIA, lobbied against ATV legislation in the Commonwealth of Virginia. For this reason I am enclosing a copy of a letter from Mr. Mel Stahl, SVIA's Vice President for Government Relations, to Mr. James Lacy, General Counsel, the Consumer Product Safety Commission ("CPSC"), detailing SVIA's position on the proposed legislation in Virginia (Attachment #2). Please note that the proposed legislation was clearly not consistent with the Preliminary Consent Decree ("PCD" -- the predecessor of the FCD) and, in fact, may have even been at odds with it. For instance, the proposed legislation would have prevented anyone under 16 years of age from riding an ATV under any circumstances, even though the PCD and FCD clearly permit the marketing of appropriately-sized ATVs for persons under 16 and contemplate special training for such riders. As Mr. Lacy concluded in his March 8 letter to Mr. Stahl (Attachment #3), there is no evidence that SVIA in any way engaged in activities inconsistent with the PCD.

Dr. Jagger admits that the original age limits which resulted in the SVIA's activity against the Virginia bill were not consistent with the PCD because the bill had to be amended to "match the age limits specified in the consent decree." However, I hasten to point out that the amendment she described in her letter was also not consistent with the consent decree because the decree does not prohibit those under 12 from riding 50-60cc ATVs as the amendment was apparently intended to do. Among other reasons, these vehicles were not covered by the consent decree because of their outstanding safety record. (Of the approximately 70,000 child-sized ATVs in use, only two have been involved in fatalities. Detailed information on the cause of these accidents indicates they were due to factors not in any way related to the vehicles' performance. The CPSC staff itself has acknowledged in its staff report and in testimony before the Commission that there have been very few injuries involving these vehicles. The staff also pointed out that elimination of these vehicles could well increase the overall risk of injury to young children because more children would ride the larger ATVs where they may be at greater risk.)

The SVIA representatives thus did not violate the spirit or the letter of the PCD, not because they were not a party to the agreement (as Dr. Jagger asserts), but because the proposed legislation was not consistent with the requirements of the consent decree.

In Section O of the FCD (Attachment #4) the ATV distributors agreed

> ... not to oppose such pending or future state legislation to the extent that it provides for age limits for ATV operations consistent with the age recommendations specified in this decree or for the requirement of hands-on training before a certificate or license is issued.

We are committed to this provision. In fact, on January 19, 1988 the SVIA wrote to its state legislative contacts and lobbyists sending them a copy of the PCD and requesting that they take no action nor state any position that is in conflict, or could be construed to be in conflict, with the foregoing provision of the decree (Attachment #5).

I hope the enclosed information on SVIA's activities with the Virginia legislature will clearly dispel any misgivings you may have regarding our strict adherence to both the spirit and the letter of the Final Consent Decree. We are confident that you are interested in promoting comprehensive ATV safety legislation in your state and, therefore, we urge you to contact Mr. Stahl, SVIA's Vice President for Government Relations, at your earliest convenience.

Sincerely,

Harry Cladouhos

Harry W. Cladouhos

HWC/jb

Enclosures

cc: Honorable Jim Florio
Honorable Albert Gore
Dr. Janine Jagger

MODEL ALL-TERRAIN VEHICLE LEGISLATION

INTRODUCTION

LEGISLATIVE DEFINITIONS

The design and unique features of all-terrain vehicles (ATVs) make it possible for them to share recreation facilities with off-highway motorcycles, snowmobiles, and four-wheel drive vehicles, but only in some locations at some times. ATVs are also widely used in agriculture, resource management, and other commercial and industrial applications. With this diversity of ATV use, it follows that unique ATV management is necessary. ATVs should be identified with a distinct statutory definition that provides a basis for regulation separate from on-highway vehicles or other off-highway and utility vehicles.

REGISTRATION AND IDENTIFICATION

ATVs are not intended or equipped for on-highway use, and should therefore be registered in a manner similar to other off-highway vehicles. ATVs must be specifically prohibited from registration for use on public streets, roads or highways. Registration fees for ATVs should be consistent with those charged for other off-highway vehicles, and used similarly to fund off-highway safety, educational, and recreational programs. Gasoline taxes attributable to fuel used by ATVs should also be passed back and allocated for these programs. By providing a distinctive registration sticker or decal, law enforcement and the recovery of stolen vehicles is also made easier.

When a state off-highway vehicle recreational program already exists, ATVs should be included in that program if suitable. In this way more users will contribute to the established program, and all users will benefit from the resources acquired from the larger registration fee and fuel tax base.

If an off-highway vehicle registration program does not already exist, a special ATV registration program should be considered. Rebating registration fees and gasoline taxes to an "ATV Fund" will provide for the safety program for ATV riders, allow development of special ATV use areas, and provide for the necessary administrative and enforcement costs.

SAFETY PROGRAM

ATV safety is best accomplished by assuring that users possess the necessary information and skills to operate the ATV. As users develop their riding skills, ATV safety is enhanced by safety education emphasizing the importance of wearing proper equipment and following all safety procedures. Riding skills may be developed through several means such as: owner's manual instruction; other printed or audio-visual material; lessons from experienced riders; or formalized training courses. Skill development is assured by an examination leading to a state safety certificate. Requiring ATV operators to be certified as having acquired minimum knowledge and skills, and to be supervised as appropriate will help all users learn to be better riders. Public information, rider education, and skills training programs have been developed by the Specialty Vehicle Institute of America and others to address safety techniques.

Age restrictions specified in this model have been determined following review of existing state laws for off-highway motorcycle and snowmobile use. Although it has long been recognized that the state has a special responsibility to protect the young, which is emphasized in this model, it is also recognized that persons of all ages may benefit from an ATV safety education, training, and skills demonstration program. Consideration should be given to making the program widely available if there is a need and the resources are made available to satisfy that need.

THE ATV RETAIL DEALER'S ROLE

As the person most directly involved with new ATV owners, the dealer should be responsible for distributing to his customers educational and informational material regarding the safe use and maintenance of the products, as made available by the state or vehicle manufacturer. In the interest of the public welfare and to ensure the proper and complete delivery of information by the dealer, he should be required to distribute certain prescribed safety information to the ATV purchaser.

OPERATION GENERALLY

To maintain an acceptable level of safety and responsibility for ATV use on public land, operator behavior should meet certain requirements. Liability for operating in a careless or reckless manner or while under the influence of alcohol or other coordination-impairing drugs must lie with the operator. Likewise, the owner of an ATV must responsibly decide who may use his ATV, as well as maintain the ATV and related equipment in a safe and complying condition.

EFFECTIVE DATE

Approximately one year of lead-time should be allowed for effective program organization and the accumulation of necessary funds.

A bill for an Act

regulating all-terrain vehicles; providing penalties; appropriating money [; amending . . .].

ARTICLE I — GENERAL PROVISIONS

Chapter 1. Definitions.

Section 101. Definitions.

As used in this [Act]:

(1) "All-terrain vehicle account" means a restricted receipts account within the [State Treasury].

(2) "Class I all-terrain vehicle (or Class I ATV)" means any motorized off-highway vehicle 50 inches (1270 mm) or less in width, having a dry weight of 600 pounds (273 kg) or less, traveling on 3 or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control. For purposes of this [Act] the term "all-terrain vehicle" shall mean a Class I ATV. Any subdivision of ATVs into more narrowly defined categories shall give consideration to the American National Standards Institute (ANSI) standard for ATVs (ATV 85-01) in its latest amended form.

(3) "Commissioner" means the [Commissioner of Natural Resources].

(4) "Dealer" means any person engaged in the business of selling, leasing, or renting all-terrain vehicles at retail, at a regular place of business.

(5) "Decal" means a pressure sensitive, adhesive-backed label, no larger than 3" x 5", to indicate the registration number and expiration date assigned to the all-terrain vehicle as prescribed by the Commissioner.

(6) "Department" means the [Department of Natural Resources].

(7) "Manufacturer" means any person engaged in the business of manufacturing all-terrain vehicles or any importer, distributor, factory branch, or factory representative of the manufacturer.

(8) "Owner" means any person, other than a person with a security interest, having a property interest or title to an all-terrain vehicle and entitled to the use and possession of the vehicle.

(9) "Person" means every natural person, firm, co-partnership, association, or corporation.

(10) "Register" means the act of assigning and recording a registration number for an all-terrain vehicle.

ARTICLE II — REGISTRATION

Chapter 1. Registration.

Section 201. General Requirements. Except as provided in Section 202, no person may operate an all-terrain vehicle on public lands within the state after [December 31, 19__] unless the all-terrain vehicle has been registered with the Department.

Section 202. Exemptions from registration. A registration is not required for the following:

(1) all-terrain vehicles owned and operated by the United States, another state, or a political subdivision thereof;

(2) all-terrain vehicles owned and operated by this state or by any municipality or political subdivision thereof;

(3) all-terrain vehicles covered by a valid registration of another state or country that have not been within this state for more than 30 days.

Section 203. Prohibitions from registration. Minors may not register an all-terrain vehicle.

Chapter 2. Registration Procedure.

Section 204. Application. Application for registration must be made to the department in a form as the Commissioner shall prescribe, and as a minimum shall state the name and address of every owner of the all-terrain vehicle and be signed by at least one owner. The application must be accompanied by the registration fee which is provided for in this chapter.

Section 205. Registration certificate and decal.

(a) Upon receipt of the application and the appropriate fee, the department shall provide to the registrant a registration certificate that includes the registration number of the vehicle, the owner's name and address, and such additional information as the Commissioner may require.

(b) With every registration certificate, the Department shall provide a decal showing the registration number and expiration date. The decal must be displayed at all times and be affixed to the left rear fender of the all-terrain vehicle.

(c) Any owner of an all-terrain vehicle may renew registration in a manner prescribed by the Commissioner upon payment of registration fees.

(d) The certificate of registration issued to the owner of an all-terrain vehicle shall expire and the decal shall become invalid when ownership of the all-terrain vehicle is transferred. Upon any transfer, the seller (and former owner) shall within 15 days from the date of sale return to the Department the certificate of registration previously issued to him or her, after writing the date of sale and the name and address of the new owner on the back. If the former owner applies for registration of a different all-terrain vehicle and pays a transfer fee, such owner may be issued, in his or her name, a certificate of registration for that all-terrain vehicle for the remainder of the registration period without payment of a registration fee.

Section 206. Replacement provisions. Information concerning each registration shall be retained by the Department. Upon a satisfactory showing that the registration certificate, decal, or card has been lost or destroyed, the Department shall issue a replacement registration certificate, decal, or card upon payment of the appropriate fee.

Section 207. Fees for registration.

(a) The fee for registration of each all-terrain vehicle under this section, other than those registered by a dealer or manufacturer under paragraph (b) or (c), is [$18] for [three] year[s] and [$3] for a duplicate or transfer of registration.

(b) The registration fee for all-terrain vehicles owned by a dealer and operated for demonstration or testing purposes is [$25] per year for the first certificate issued to the dealer and [$3] for each additional certificate issued to the same dealer within the current registration period. Dealer registrations are not transferable.

(c) The registration fee for all-terrain vehicles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes is [$50] per year for the first certificate issued to the manufacturer and [$10] for each additional certificate issued to the same manufacturer within the current registration period. Manufacturer registrations are not transferable.

(d) The Department shall issue an identifying registration card in lieu of a registration decal with each dealer or manufacturer certificate. The registration card must be affixed to the all-terrain vehicle in a conspicuous location at all times that the vehicle is in use by the manufacturer or dealer for purposes requiring registration. Any one certificate issued pursuant to this section must be used for only one vehicle at any given time.

(e) The Department shall credit the fees collected under this Article to the all-terrain vehicle account.

Chapter 3. Provision for Regulation, Allocation.

Section 208. Powers of the Commissioner. The Commissioner may adopt rules relating to all-terrain vehicles, including:

(1) registration of all-terrain vehicles and display of registration numbers;

(2) uses of all-terrain vehicles that affect fish and game resources;

(3) use of all-terrain vehicles on public lands and waters under the jurisdiction of the Commissioner; and

(4) uniform signs to be used by the state, municipalities and political subdivisions of the state to control, direct, or regulate the operation and use of all-terrain vehicles.

Section 209. [Commissioner of Public Safety.] The [Commissioner of Public Safety] may adopt additional rules regulating the use of all-terrain vehicles.

Section 210. Advisory committee.

(a) The governor may appoint an advisory committee to advise the Commissioner on the suitability of projects he initiates with regard to this [Act].

(b) The advisory committee may consist of:

(1) one representative from the Department of [Natural Resources];

(2) one representative from the [Department of Public Safety];

(3) one representative of the manufacturers of all-terrain vehicles;

(4) one representative who is a dealer in all-terrain vehicles;

(5) two all-terrain vehicle operators, one of whom shall represent an all-terrain vehicle user group; and

[(6) one representative of a snowmobile user group.]

NOTE TO COMPILER: if subparagraph (6) is omitted, decrease assignment in (a) to one person to avoid making the total of committee members an even number.

Section 211. All-terrain vehicle account.

(a) There is hereby established the all-terrain vehicle account to which shall be credited all monies received from fees collected and revenue allocated under this [Act] and which must be used solely for expenses incurred under this [Act].

(b) Monies in the all-terrain vehicle account are continuously appropriated to the Department. Not less than 50 percent of such monies shall be used by the Department for funding the safety education, training, and skills demonstration program established in Section 301 and for acquisition, maintenance, and development of all-terrain vehicle trails and use areas. The remaining amount shall be appropriated for the administration, implementation, and enforcement of this [Act].

Section 212. Registration fees and unrefunded gasoline tax revenue.

(a) The Department shall credit fees from the registration of all-terrain vehicles to the all-terrain vehicle account.

(b) The Commissioner shall determine in cooperation with the [Department of Revenue] the sum representing the amount of revenue derived from tax on fuel used in all-terrain vehicles operated in this state. This sum shall be credited to the all-terrain vehicle account from the revenue derived from the tax on fuel imposed by the [Motor Fuel Tax Act].

ARTICLE III — EDUCATION AND TRAINING PROGRAM

Chapter 1. Education and Skills Certification.

Section 301. Program established.

(a) The Commissioner shall establish standards for and shall implement a comprehensive all-terrain vehicle safety education, training, and skills demonstration program. The program shall provide for the training of all-terrain vehicle operators, and for the issuance of all-terrain vehicle safety certificates to operators of all ages who successfully complete the training or pass the knowledge and skills test established under the program.

(b) The Commissioner shall establish a knowledge and skills test for use in examining persons who desire a safety certificate. Such a test will be available to all applicants at times and at locations prescribed by the Comissioner.

(c) All operators seeking a safety certificate must successfully pass a knowledge and skills test administered by the Commissioner or other party authorised by the Commissioner.

(d) For applicants who want formal training to assist them in developing the knowledge and skills necessary to obtain a safety certificate, the Commissioner shall establish a program to certify all-terrain vehicle safety instructors, clubs, associations, municipalities or political subdivisions of the state to act as agents in conducting classes or examinations and issuing safety certificates in his name.

(e) This program shall incorporate minimum requirements designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation of an all-terrain vehicle.

Section 302. Certification of all-terrain vehicle safety instructors. The Commissioner shall certify all-terrain vehicle safety instructors. These instructors may act as his agents in conducting classes or examinations and issuing safety certificates in his name. All-terrain vehicle safety instructors shall meet the following requirements to become certified:

(1) possess current all-terrain vehicle safety instructor certification issued by a recognized all-terrain vehicle safety organization;

(2) be at least 18 years of age and hold a valid motor vehicle driver's license;

(3) the instructor's vehicle driver's license may not have been suspended or revoked any time during the immediately preceding two (2) years; and

(4) have no conviction for driving under the influence of alcohol or drugs during the immediately preceding five (5) years.

Section 303. Fees established. For the purpose of administering the all-terrain vehicle safety education, training, and skills demonstration program established in Section 301, and to defray a portion of the expenses of training and certifying all-terrain vehicle operators, the Commissioner may collect a fee of not to exceed [$5] from each person who receives the training, and [$2] from each person who is examined to receive a safety certificate, and shall credit any fees collected to the all-terrain vehicle account.

Section 304. Alternative delivery of education courses.

(a) The Commissioner may authorize private persons, clubs, associations, or municipalities or political subdivisions of the state to act as agents in conducting classes or examinations and issuing all-terrain vehicle safety certificates in his name. Any private person, club, association, or municipality may charge a reasonable fee for the examination or training course.

(b) The Commissioner shall regulate and administer the all-terrain vehicle education or training program established by this [Act] as prescribed in Article III and any private party authorized under the provisions of the preceding paragraph may not be further regulated by this State's commercial driver training laws and regulations, [Chapter].

Chapter 2. Operation.

Section 305. Operators.

(a) No person under age 14 shall operate an all-terrain vehicle on public lands of this state unless the person satisfies one of the following conditions:

(1) is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor;

(2) is under the direct supervision of an adult who holds an appropriate safety certificate issued by this state, or issued under the authority of another state or province of Canada;

(3) holds an appropriate safety certificate issued by this state, or issued under the authority of another state or province of Canada. In addition, he or she must be accompanied by and under the direct supervision of a parent or guardian or be accompanied by and under the direct supervision of an adult who is authorized by the parent or guardian.

(b) No person 14 years of age or older shall operate an all-terrain vehicle on public lands of this state unless the person satisfies one of the following conditions:

(1) is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor;

(2) is under the direct supervision of an adult who holds an appropriate safety certificate issued by this state, or issued under the authority of another state or province of Canada;

(3) holds an appropriate safety certificate issued by this state or issued under the authority of another state or province of Canada.

Section 306. Failure to exhibit certificate. If a person who is required to hold an appropriate safety certificate fails to exhibit the safety certificate upon demand to a law enforcement officer having authority to enforce the provisions of this [Act], the officer shall consider this failure to be a rebuttable presumption that the person is not the holder of a safety certificate.

Chapter 3. All-Terrain Vehicle Retail Dealers.

Section 307. Requirements of dealers. Dealers shall distribute to all-terrain vehicle purchasers safety information, as may be made available by the Commissioner or the vehicle manufacturers.

ARTICLE IV — OPERATION REQUIREMENTS

Chapter 1. Operator Requirements.

Section 401. Operation generally. No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or to cause injury or damage to any person or property.

Section 402. Operation on streets, roads and highways.

(a) Except as provided in this section, an all-terrain vehicle shall not be driven or operated on any public street, road, or highway of this state.

(b) The crossing of a street, road, or highway is permitted only if:

(1) the crossing is made at an angle of approximately 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(2) the vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

(3) the operator yields the right of way to [illegible] constitutes an immediate potential hazard;

(4) in crossing a divided highway, the crossing is made only at an intersection of the highway with another public street, road, or highway; and

(5) if equipped, both the headlight and taillight are on when the crossing is made.

(c) The crossing of any interstate or limited access highway is not permitted.

Section 403. Helmet and eye protection required. No person shall operate, ride, or be otherwise propelled on an all-terrain vehicle on public land unless the person wears a safety helmet meeting U.S. Department Of Transportation standards and eye protection.

Section 404. Passenger restrictions. No operator of a Class I all-terrain vehicle shall carry a passenger when operating on public lands.

Section 405. Operating under the influence of alcohol or a controlled substance.

(a) A person shall not operate or be in actual physical control of an all-terrain vehicle in this state when the person is:

(1) under the influence of alcohol;

(2) under the influence of a controlled substance;

(3) under the influence of a prescription or non-prescription drug that impairs vision or motor coordination; or

(4) under the influence of a combination of any two or more of the elements in subparagraphs (1) through (3).

Chapter 2. Equipment Requirements.

Section 406. Headlamp and tail lamp - - time of operation. Every all-terrain vehicle operated during hours of darkness shall display a lighted headlamp and tail lamp. These lights must be in operation during the period of from one-half hour after sunset to one-half hour before sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions.

Section 407. Service Brakes. Every all-terrain vehicle must be equipped with a brake system maintained in good operating condition.

Section 408. Muffler. Every all-terrain vehicle must be equipped with an adequate muffler system in good working condition.

Section 409. Spark arrester. Every all-terrain vehicle must be equipped with a United States Forest Service qualified spark arrester. /

Section 410. Exhaust System Modifications Prohibited. No person shall:

(1) equip the exhaust system with a cut-out, bypass, or similar device;

(2) operate an all-terrain vehicle with an exhaust system so modified or;

(3) operate an all-terrain vehicle with the spark arrester removed or modified except for use in closed course competition events.

Section 411. Exceptions. All-terrain vehicles participating in certain competitive events may be exempted from Sections 408 through 410 at the discretion of the Commissioner.

ARTICLE V — MISCELLANEOUS PROVISIONS

Chapter 1. Responsibility of Owner, Accident Reporting, Effective Date.

Section 501. Responsibility of owner. No owner shall authorize or permit an all-terrain vehicle to be operated contrary to this [Act].

Section 502. Accidents and accident reports.

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident pursuant to state law.

NOTE TO COMPILER: Direct report to the appropriate department.

Section 503. Effective date. This act shall take effect on [December 31, 1987]. Section 301 shall be operational on or before [December 31, 1988].

NOTE TO COMPILER: This model legislation designates in brackets effective dates, departments with jurisdiction, and dollar fee amounts. This is done for ease of reading and to exemplify current practice. It is not intended as a standard for all states to strictly follow; rather, the dates, departments, and fees stipulated in this model, when introduced as a bill, should reflect each state's needs and customary practices.

For additional information regarding this model or the general subjects of ATV safety programs use and operation, statistics or industry practices please contact the Government Relations Office, Specialty Vehicle Institute of America (SVIA), 1235 Jefferson Davis Highway, Suite 1410, Arlington, Virginia 22202, (703) 521-8444.

SVIA is a national, not-for-profit trade association created to foster and promote the safe and responsible use of specialty vehicles manufactured and/or distributed in the United States of America.

STATE ALL-TERRAIN VEHICLE REQUIREMENTS

Specialty Vehicle Institute of America

SEPTEMBER 1987

	REGISTRATION	TITLE	OHV OPERATOR'S LICENSE	MINIMUM AGE	SAFETY EDUCATION CERTIFICATE	EQUIPMENT REQUIREMENTS					ON-ROAD USE	CLASSIFIED AS
						LIGHTING	BRAKES	MUFFLER	SPARK ARRESTER	OTHER		
Alabama												
Alaska				14DS								OHV
Arizona		•						•°C				
† Arkansas	•A			12D		•G		•	•		X,Z	ATV
† California	•A	•		#•14E; 16En or a	#•En	•G	•	•C	•	#•gE	Z	OHMV/ATV
Colorado								•C			X	OHV/ATV
† Connecticut	•A		•F	12E 16DE	•	•	•	•			Z	ATV
Delaware	#•AC			12D		•G	•	•C	•	•K°	J	OHV
Dist. of Col.												
Florida	•BE											ORV
Georgia							•	•			g°	ORV
Hawaii												
Idaho											X	ATV
† Illinois ##	•B			16,12D&a 16D or a	•a,bD	•G	•	•	•	•HE	Z	ATV
Indiana	•BCE		•F	14C		•	•H	•			Z	ORV
Iowa	•BE			12HE, 16Fa&M	•QE	•	•	•C			Z,(ga)	Snowmobile/ATV
Kansas											g°	ATV
Kentucky								•				ORV
Louisiana	•A	•										ORV
† Maine	•AC			16D	•a	•GC		•C	•	•G	Z	ATV
Maryland	•BS		•PS	17S		•GS	•S	•S				ORV
Massachusetts	•B			12 14D 16 aF		•	•	•(I°)	•	•K	Z	RV
Michigan	•AC			12D 15D or R	•bD&F	•G	•H	•(I°)C	•		Z	ORV
† Minnesota	•A or B			14DE 12PE	•HD	•PG				•E	Z	ATV
Mississippi												
Missouri		•										
Montana	•A								•S			OHV
† Nebraska						•F&G	•	•	•C		Z(ga)	ATV
Nevada								•	•			
New Hampshire	•B		•Fs	12D 16D or a	•bD	•G	•H	•(I°)C	•	•h	Z	OHRV/ATV
† New Jersey	•ACE			14E		•C	•	•		•KL	Z	ATV
New Mexico	•A	•									Z	OHMV
† New York	•AC			16D 10R	•cD	•GC	•	•(I°)C	•	•K	Z	ATV
North Carolina												
† North Dakota	•AC		•S	16,12R	•b	•	•	•(IS)		•G	Z	ATV
Ohio	•A		•E	16D 12U		•	•	•				APV
Oklahoma						•SG		•°S	•°S	•OS		ORV
† Oregon	•A	•	•E,a or D	12FD	•d	•G	•	•I	•S	•W	Z	ATV
† Pennsylvania	•B			10E 16a	•c	•G	•H	•I	•S	•KF	Z	ATV
Rhode Island	•B	•	•T	12E, 16D&F		•F&G	•	•C		•KL		RV
South Carolina												
South Dakota		•									Z & s	ATV/ORV
Tennessee		•						•°S	•°S	•°NS	Z	OHMV
† Texas	•AE	•		14D	•mE	•SG	•E	•E	•SC	•ME	Z	ATV
† Utah	•BE	•n	•sE	8E 16a	•m	•G	•	•		•Y	Z	ATV/OHV
† Vermont	•AE			12D 16FD		•C	•C	•C			Z	ATV
Virginia												
Washington	•AC					•G	•	•I	•			NHV/ORV
W. Virginia												
† Wisconsin	•BC	•		12D,16D or a	•bD	•F&G	•	•			X,Z X°	ATV
Wyoming												

• — Required by law or regulation
† — Law contains specific ATV provisions
* — Applies to 3-wheel ATVs only
# — Takes effect 1/1/88
— Takes effect 10/1/88
A — By motor vehicle registration agency
B — By recreation management agency
C — Except in authorized events
D — Unless supervised
E — Applies only on public lands
F — To cross highway
G — For night operation only
H — Specific performance requirements
I — Decibel limit specified
J — Prohibited
K — Approved helmet
L — 16 sq. in. reflective material on each side of ATV
M — Unless accompanied by adult with safety certificate or operator's license
N — For ages 12-14
O — Helmet (for 3-wheelers), flag on whip, as specified (on all ATVs)
P — Must have license or learner's permit, or be accompanied by license holder or parent
Q — If born after 7/1/65
R — With safety certificate
S — Applies only on specified public lands
T — For ages 16-18 to cross highway
U — On DNR lands if accompanied by parent
V — Lights required at night
W — Red flag (on sand), chain guard (if equipped with chain), metal fuel tank
X — Prohibited except for agricultural purposes
Y — Helmet in competitive events & under age 18
Z — Prohibited except to cross highway
a — Unless safety certificate is possessed
b — For ages 12-15
c — For ages 14-15
d — In certain geographic areas only
e — During daylight hours only
f — Unless supervised or motor vehicle operator's license possessed
g — Allowed for agricultural purposes
h — Helmet and eye protection
i — For persons under age 16
j — Helmet under age 18
k — For 1988 models and newer
m — Unless operator's license possessed
n — Unless supervised by adult with safety certificate
o — For ages 10 and 11
p — Helmet under age 15½
r — Unless supervised by parent or his designee and either has safety certificate or is supervised by adult with certificate
s — Prohibited except for registered 4-wheel ATVs of 200 cc or more

Classification Abbreviations

APV — All-purpose vehicle
ATV — All-terrain vehicle
NHV — Non-highway vehicle
OHV — Off-highway vehicle
OHMV — Off-highway motor vehicle
OHRV — Off-highway recreational vehicle
ORV — Off-road vehicle
RV — Recreational vehicle

This chart is compiled by SVIA's Government Relations Office. Although it represents information from the most authoritative sources available, SVIA is not responsible for accuracy or completeness. Many of the provisions summarized herein have exceptions and may require further explanation. It is necessary to refer to the actual laws and regulations for specific details. This chart will be updated annually as state legislatures enact or amend ATV requirements. Please contact SVIA for additional information concerning ATVs or for additional copies of this chart.

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SVIA DEVELOPS MODEL ATV STATE LEGISLATION

The Specialty Vehicle Institute of America, the national trade association representing the four major distributors of all-terrain vehicles (ATVs), has announced development of model legislation for use by legislators and interest groups who would like to see an all-terrain vehicle bill introduced in their state legislature.

The intent of this model is to foster and promote the safe and responsible use of all-terrain vehicles. The Specialty Vehicle Institute of America believes this may be achieved through the prudent and thoughtful application of the provisions of the model.

The model incorporates into a comprehensive Act various facets of all-terrain vehicle use and regulation. It provides for a vehicle registration system and allocates registration fees to an all-terrain vehicle fund. Unrefunded gasoline taxes attributable to ATV use are also allocated to this fund. All of these monies are designated for an education and training program, development and maintenance of trails and recreation areas, and administrative and enforcement expenses.

A comprehensive education, training, and skills demonstration program funded by the all-terrain vehicle account is established. It provides for training and/or the testing of operators to receive safety certificates. It also provides for certification of ATV safety instructors, and allows delivery of classes through private persons, clubs, and associations authorized by the state. Operators who ride on public land must either hold a safety certificate or be supervised by an adult who holds a safety certificate. Operators under 14 years of age must be supervised under all circumstances, whether certified or not. A helmet and eye protection are required at all times.

Other operational requirements include sections addressing road-use prohibitions, providing exceptions for crossings made at a right angle, and equipment requirements, more specifically, mentioning spark arresters, brakes, mufflers, and requiring a headlight and taillight when the vehicle is used during hours of darkness. Operators are prohibited from driving an ATV while under the influence of alcohol or controlled substances.

Two areas of responsibility are addressed. Dealers are required to distribute with the vehicle at time of sale any safety information made available to them by the state or the manufacturers. Owners are held responsible for whom they authorize to operate their all-terrain vehicle. Additional related provisions are included.

For information regarding this model or ATV legislation in general, please contact the Government Relations Office, Specialty Vehicle Institute of America (SVIA), 1235 Jefferson Davis Hwy, Suite 1410, Arlington, Virginia 22202, (703) 521-0444. For additional information on the general subjects of ATV safety programs, statistics or industry practices, please contact the Executive Office, SVIA, 3151 Airway Avenue, Bldg. K-107, Costa Mesa, California 92626, (714) 241-9256.

SVIA
Specialty
Vehicle
Institute of
America

Attachment #2

March 1, 1988

James V. Lacy, Esquire
General Counsel
U.S. Consumer Product Safety
  Commission
Washington, DC 20207

Dear Mr. Lacy:

I am in receipt of your letters of February 24, 1988 to Messrs. English, Spotts and Williams regarding the inquiry into whether defendants or representatives of the defendants in Civil Action No. 87-3525 opposed pending legislation that provided for age limits for ATV operators consistent with those specified in the Preliminary Consent Decree, or for a requirement of hands-on training before a certificate or license is issued.

I believe it appropriate that I respond since Mr. English is an employee of the SVIA who works directly for me, Mr. Spotts is a legislative advocate that we retain in Virginia, and Judge Williams is registered to lobby on our behalf. Included in this transmission are the responses of these individuals to me regarding your request for a breakdown of the legislative contacts made in Virginia with respect to certain ATV legislation and a summary of the position taken. I would also like to share with you and the Commission some additional views that you may find informative and useful in assessing this matter.

Let me start by stating that although the SVIA is not a party to the Preliminary Consent Decree, it has not acted inconsistent with its provisions. As you may know, the threshold requirement in Senate Bill 54, which I assume is the legislative proposal at issue, was that:

> No all-terrain vehicle shall be operated: by any person under the age of sixteen anywhere at any time, or under any circumstances;

There were eight additional prohibitions or requirements ranging from the need to possess a valid Virginia driver's license (which is for the operation of registered on-highway motor vehicles) to the requirement that the ATV dealer place on the vehicle a permanent decal that recites all the provisions of the law.

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The proposed absolute minimum age limit of 16 years for the operation of any ATV is not consistent with the age limits specified in the Preliminary Consent Decree, nor is it consistent with the CPSC recommendations with regard to operator age restrictions. Nowhere in Section 46.1-172.04 do the words training or hands-on training appear.

Since the age limit called for bore no relationship to those specified in the decree and the bill was silent regarding the matter of training of any sort, it was my determination that our opposition to SB 54 would not be a violation of the decree.

We opposed the bill because in our opinion it would have been bad law, a view shared by a majority of the legislators considering the measure.

As you may know, hearings were held on SB 54 on January 28, February 2 and 4. The full Senate Transportation Committee took testimony on the 28th at a well-orchestrated hearing complete with a doctor resplendent in operating room regalia and a showing of the "60 Minutes" tape. We appeared along with other interests in opposition to the bill.

The bill was referred to Subcommittee which held a hearing on February 2. The bill sponsor opened the testimony by offering six amendments, to garner additional support for his measure. These amendments however, were criticized by a member of the Subcommittee as a blatant willingness to sacrifice the very safety concerns which the proponents used to justify the bill in order to gain the farm vote. We again appeared in opposition to the bill, although Mr. English, in testimony, urged the bill be sent to interim study. During this testimony he made it clear the SVIA supports hands-on training and ATV operator certification programs, explained the age provisions of the preliminary consent decree and clearly stated for the record that we do not oppose minimum age requirements consistent with those in the consent decree.

The full Committee met on the 4th to receive the report of the Subcommittee. The bill had been substantially amended by the Subcommittee and the sponsor urged approval as a stopgap measure. One amendment dealt with operator age limits which were reasonably consistent with the decree. Another imposed a fee of ten dollars to be used for all-terrain vehicle safety education programs. We could have selectively supported both these amendments as Mr. English established for the record in the hearing of the 2nd. However, no public testimony was taken at this meeting.

After considerable discussion over the many unanswered questions raised by the bill, it was moved that the bill be carried over so the entire matter could be considered over the interim. Senator Michie, the sponsor of SB 54, offered Senate Joint Resolution 6, "Establishing a Joint Subcommittee to study all-terrain vehicles" and the motion carried.

We believe it is an incorrect characterization of the action in the Senate of the Commonwealth of Virginia to say that all-terrain vehicle legislation was defeated. It is still pending and carried over for interim study, which is typical of the action generally taken by the Virginia General Assembly when dealing with controversial matters.

There is an additional observation that I will make with regard to the Subcommittee hearing on February 2. This meeting was tape recorded at the request of a Committee member. I understand you are in possession of the tape. If so, I am sure you are aware of the testimony of Mr. English regarding operator ages, hands-on training, and our full recognition and observance of the constraints placed upon us by the Preliminary Consent Decree.

Since Virginia statutes do not require that lobbyists maintain a log of legislative contacts, it is difficult to list with accuracy exactly who was contacted regarding this matter. To the best of our recollection, Mr. English made no individual legislative contact other than a short letter to Senator Saslaw providing information in response to a question the Senator asked during Committee hearing.

Messrs. Spotts and Williams are in a somewhat different circumstance as their job is to contact legislators and other government officials in the everyday conduct of business. Contacts were made with all members of the Committee and Senate leadership as well as Commissioner Williams of the DMV, Col. Suthard of the State Police and Attorney General Terry. There were certainly others.

The positions taken included the following:

-- Excessive and unnecessary government intrusion with regard to individual privacy and property rights
-- Confiscation of property with regard to those vehicles purchased for and used by persons under age 16
-- Difficult to enforce with regard to minors on private property
-- Places law enforcement officers in a position of being accused of harrassement
-- Does not consider the wide use of ATVs for other than recreation
-- The definition does not cover all ATVs

- -- The permanent dealer devised vehicle label would seriously diminish the effectiveness of the safety warning labels required by the decree
- -- Does not recognize the realities of motorized vehicle and equipment use both on and off highway and on waterways by the general population and particularly in the rural community
- -- Does nothing to provide for ATV operator safety awareness, education, or training
- -- Is supported by a very narrow special interest

I believe we have exercised due care and diligence in this matter and our activity has been entirely consistent with the terms of the manufacturers' agreement in the Preliminary Consent Decree.

Sincerely,

Melvin R. Stahl
Vice President
Government Relations

11LACYG

1
Attachment #3

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

March 8, 1988

OFFICE OF THE
GENERAL COUNSEL

Melvin R. Stahl, Vice President
Specialty Vehicle Institute of America
1235 Jefferson Davis Hwy.
Suite 1410
Arlington, Va. 22202

Dear Mr. Stahl:

Thank you for responding to our letters of February 24, 1988, to Messrs. English, Spotts and Williams, regarding whether SVIA's lobbying activities in the State of Virginia included opposition to pending legislation that provided for age limits for ATV operators consistent with those specified in the preliminary consent decree agreed to by the major ATV distributors.

Based on our review of the information you provided, as well as other information which we obtained during the course of our inquiry, we have decided not to pursue this matter further at this time. We may, however, re-open our inquiry if additional information should arise which indicates that SVIA has engaged in lobbying activity inconsistent with the provisions of the preliminary consent decree.

Sincerely yours,

James V. Lacy
General Counsel

cc: Stuart Philip Ross, Esq.
John English
Meade Spotts
E. H. Williams, Jr.

Attachment #4

O. STATE LEGISLATIVE INITIATIVES

There are pending in certain state legislatures proposals for the licensing and certification of ATV operators. In entering into this final consent decree, defendants agree and undertake not to oppose such pending or future state legislation to the extent that it provides for age limits for ATV operators consistent with the age recommendations specified in this decree or for the requirement of hands-on training before a certificate or license is issued.

SVIA
Specialty
Vehicle
Institute of
America

Attachment #5

January 19, 1988

Lisa Hilbert
16 N. Carroll Street
Suite 200
Madison, WI 52703

Dear Lisa:

As you are aware, the distributors of all-terrain vehicles have entered into a Preliminary Consent Decree with the U.S. Consumer Product Safety Commission and the Department of Justice regarding certain aspects of these products in commerce.

I am enclosing a copy of the decree so you may be fully apprised of its content. There have been instances where the media has distorted or inaccurately reported on this matter so it is important that you be properly informed.

Of greater significance for you however, is the provision relating to state legislative initiatives, paragraph O, page 24. Under this provision the ATV distributors have agreed not to oppose pending or future state legislation to the extent that it provides for age limits for ATV operators consistent with those specified in the consent decree or the requirement of hands-on training before a certificate or license is issued. The age limits are contained in paragraph G of the decree.

It is most important, in your dealings with the legislature and the regulatory authorities, that you take no action nor state any position that would be in conflict with this, or any other provision of the decree, or could be construed to be in conflict with the decree.

I will be sending you further information and guidance on this entire matter as it's developed and encourage you to give me a call anytime if there are questions or concerns of any sort regarding our own legislative initiatives or our position with regard to initiatives of others.

Sincerely,

Melvin R. Stahl
Vice President
Government Relations

Enclosure

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ONE HUNDREDTH CONGRESS

JAMES J. FLORIO, NEW JERSEY, CHAIRMAN

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(EX OFFICIO)

WILLIAM E. DANNEMEYER, CALIFORNIA
MATTHEW J. RINALDO, NEW JERSEY
DON RITTER, PENNSYLVANIA
HOWARD C. NIELSON, UTAH
JOE BARTON, TEXAS
NORMAN F. LENT, NEW YORK
(EX OFFICIO)

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND COMPETITIVENESS

Washington, DC 20515

ROOM H2-151
HOUSE OFFICE BUILDING ANNEX NO. 2
PHONE (202) [illegible]

GREGORY E. LAWLER
CHIEF COUNSEL AND STAFF DIRECTOR

March 22, 1988

Mr. Edward Harrill
Director, Office of Congressional Relations
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Harrill:

Enclosed are questions for the record of the March 16, 1988 Subcommittee hearing on all-terrain vehicles. I would appreciate it if the specified Commissioners could respond by April 5, 1988.

Thank you for your cooperation.

Sincerely,

J J Florio

James J. Florio, Chairman
Subcommittee on Commerce,
Consumer Protection, and Competitiveness

JJF:rhr
Enclosure

CHAIRMAN TERRENCE SCANLON'S RESPONSES TO QUESTIONS
MARCH 16, 1988 HEARING

1. QUES: In a memo dated August 13, 1987, the Commission's Director of Epidemiology wrote that "fully half the cases [of ATV deaths] involve collisions." The implication of this memo was clear -- half the accidents were the fault of the rider, not the vehicle. Yet, as the Commission's engineering expert, Mr. Deppa, correctly pointed out in a memo dated October 6, 1987, such a conclusion "seems equivalent to a report summarizing a major Government study on airline safety concluding that almost all airline deaths are due to impact."

Commissioners Dawson and Graham, what do you think of the Epidemiology memo and of Mr. Deppa's response?

Chairman Scanlon, how do these misleading reports, such as the Epidemiology memo, get generated?

1. ANS: The August 13, 1987 memorandum by the Director of Epidemiology provides an arithmetic summary of already publicly available information which the Commission compiles about ATV deaths quarterly. Attached is a recent copy of such a list on which the memo is based. I call your attention specifically to the next to last column. Neither conclusions nor inferences concerning causality are contained in the August 13th memo.

2. QUES: I understand that during negotiations between the ATV industry and the CPSC, the industry suggested language which would make the consent decree null and void if Congress passed ATV legislation. I also understand the industry may have suggested that the CPSC should not testify in favor of ATV legislation at this hearing.

Please explain and please provide the Subcommittee with all documents relating to those proposals and suggestions.

2. ANS: Counsel for the ATV industry offered two proposals relative to your inquiry. One proposal would have relieved the industry of their obligations under the Consent Decree if Congress imposed additional requirements or obligations with regard to ATVs. The second proposal would have allowed the industry to seek relief from the Court if the Commission (not Congress) sought to impose or enforce additional obligations. The Commission rejected both proposals and this rejection was communicated to counsel for the ATV industry, and is not incorporated in the final Consent Decree. Copies of those proposals are attached as Exhibits 2A and 2B.

3. QUES: At the Commission's December 16, 1987 briefing on ATVs, I understand Deputy Assistant Attorney General Robert Cynkar urged the Commission to specifically keep Congress in the dark about the ATV negotiations. Could you describe specifically what Mr. Cynkar suggested with respect to not informing Congress?

3. ANS: Attached is a copy of the "Restricted" minutes of the December 16, 1987 meeting approved by the entire Commission. The minutes summarize the statements made by Mr. Cynkar on December 16th. Summary minutes were deemed appropriate for this meeting pursuant to the regulations specified at 16 C.F.R. § 1013.5.

4. QUES: Please provide a copy of all documents prepared by the Commission staff to brief the Commission for the Subcommittee's hearing, including any analysis of the costs and benefits of any refund or recall options. Please state explicitly all assumptions made in such analyses, including any assumptions regarding the assumed life of ATVs.

4. ANS: Attached are the documents, prepared by the Commission's staff in preparation for your Subcommittee's hearing on March 16, 1988, which include "Restricted" material.

5. QUES: In a memo dated February 8, 1988 from Mr. Marchica to the Commission, Mr. Marchica projected ATVs in use and ATV injuries through 1992. Please provide all assumptions used in making these projections. Please describe specifically how the data regarding both the ATV injuries and ATVs in use were developed and projected. Please provide any documentation underlying these projections.

5. ANS: Attached are the documents, relating to the February 8, 1988 memorandum from Nick Marchica regarding the ATV injury rate through 1992. Some include "Restricted" material.

[Since the material requested in questions three, four and five is restricted, it has not been placed in the public record.]

EXHIBIT 2A

RESTRICTED

Def. Proposal
March 4, 1988

Effect of Federal Legislation

The parties recognize that legislation may be enacted by the United States Congress that will impose on defendants, either directly or through rule-making by the Consumer Product Safety Commission, requirements and obligations relating to ATVs other than, or in addition to, those undertaken by defendants in the Preliminary Consent Decree and this final consent decree. If any such legislation is enacted into law within _______ years of the effective date of this final consent decree, the defendants shall be relieved of any requirements of this final consent decree that impose obligations to be performed after the date of enactment.

EXHIBIT 2 B

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FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

March 11, 1988

BY HAND

Mr. Stephen E. Hart
Assistant Director of Federal
  Programs Branch
Civil Division
Department of Justice
Tenth and Constitution Avenue
Washington, D.C. 20530

Re: United States of America v. American Honda Motor Co., Inc., et al., Civil Action No. 87-3525

Dear Steve:

As indicated in our meeting this morning, we are enclosing for consideration a draft additional paragraph to be added to the present draft of the Reservation of Rights section of the final decree.

This submission is made on behalf of all defendants.

Howard Willens will be in touch with you about this later today.

Sincerely,

Lloyd N Cutler

Lloyd N. Cutler

Enclosure

3/11/88

Proposed Addition to Reservation of Rights Section

In the event that the Commission takes action to impose or enforce obligations on the defendants relating to ATVs that are not within the reservation of rights set forth in this paragraph, any defendant may apply to the Court to be relieved of any further obligations imposed by this decree that were consented to by such defendant or defendants in reliance on the limitations set forth in such reservation of rights. Such application shall be in addition to any other remedy available to such defendant to challenge any such Commission action.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

April 22, 1988

The Honorable James J. Florio
Chairman
House Subcommittee on Commerce, Consumer
Protection and Competitiveness
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

As a followup to your March 16 Subcommittee hearing on All-Terrain Vehicles (ATVs), several questions were subsequently forwarded to the Commissioners for responses in writing, including a request to Chairman Scanlon for "...all documents prepared by the Commission staff to brief the Commission for the Subcommittee's hearing."

In Chairman Scanlon's response to these questions and in conformance with your request, he attached a series of documents, both Restricted and Non-restricted, including the Restricted memorandum of March 11, 1988, on "Motorized Vehicle Comparative Safety Data."

The purpose of this letter is to clarify that that document was prepared at Chairman Scanlon's request and was for his personal use in preparation for the hearing. It did not receive clearance under Section 6(b)(6) of the Consumer Product Safety Act (CPSA) and was not circulated to the other Commissioners at that time. Consequently, it is not a Commission approved document.

Let me know any time I can provide assistance or information.

Sincerely,

Edward D. Harrill

Edward D. Harrill
Director of Congressional Relations

cc: The Honorable William E. Dannemeyer
The Commission

Attachment I

DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

FSTATE	FREQUENCY	PERCENT	CUMULATIVE FREQUENCY	CUMULATIVE PERCENT
AK	28	3.3	28	3.3
AL	19	2.2	47	5.5
AR	37	4.3	84	9.9
AZ	14	1.6	98	11.5
CA	64	7.5	162	19.0
CO	1	0.1	163	19.1
CT	4	0.5	167	19.6
FL	29	3.4	196	23.0
GA	10	1.2	206	24.2
IA	11	1.3	217	25.5
ID	7	0.8	224	26.3
IL	19	2.2	243	28.5
IN	18	2.1	261	30.6
KS	15	1.8	276	32.4
KY	12	1.4	288	33.8
LA	28	3.3	316	37.1
MA	11	1.3	327	38.4
MD	3	0.4	330	38.7
ME	12	1.4	342	40.1
MI	42	4.9	384	45.1
MN	33	3.9	417	48.9
MO	19	2.2	436	51.2
MS	26	3.1	462	54.2
MT	6	0.7	468	54.9
NC	18	2.1	486	57.0
ND	12	1.4	498	58.5
NE	9	1.1	507	59.5
NH	10	1.2	517	60.7
NJ	9	1.1	526	61.7
NM	12	1.4	538	63.1
NV	6	0.7	544	63.8
NY	58	6.8	602	70.7
OH	21	2.5	623	73.1
OK	6	0.7	629	73.8
OR	10	1.2	639	75.0
PA	42	4.9	681	79.9
RI	1	0.1	682	80.0
SC	2	0.2	684	80.3
SD	4	0.5	688	80.8
TN	26	3.1	714	83.8
TX	21	2.5	735	86.3
UT	19	2.2	754	88.5
VA	13	1.5	767	90.0
VT	7	0.8	774	90.8
WA	16	1.9	790	92.7
WI	44	5.2	834	97.9
WV	17	2.0	851	99.9
WY	1	0.1	852	100.0

Question 1 Attachments

Attachment II

DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

---------- YEAR=87 ---------- **

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
1	871105	4 WHEELS	PASSENGER	15	M	HAMPTON	ROCKINGHAM	NH	COLLISION	HIT POLE/THROWN
2	871105	4 WHEELS	DRIVER	17	M	HAMPTON	ROCKINGHAM	NH	COLLISION	HIT POLE/THROWN
3	871105	4 WHEELS	DRIVER	23	M	JACKSON TWSP		PA	COLLISION	STRUCK EMBANKMENT/HIT TREE
4	871101	4 WHEELS	DRIVER	14	M	NORTHFIELD TWSP		MI	COLLISION	WITH CAR
5	871101	3 WHEELS	DRIVER	46	M	BOWLING GREEN	WARREN	KY	TERRAIN CHG	EMBANKMENT/THROWN
6	871031	4 WHEELS	DRIVER	24	M	SO BEAVER TWP		PA	COLLISION	HIT CABLE
7	871025	3 WHEELS	DRIVER	17	M	COLUMBUS	BARTHOLOMEW	IN	COLLISION	HIT TELEPHONE POLE/THROWN
8	871024	4 WHEELS	DRIVER	31	M		LAKE	OR	COLLISION	HIT TREE
9	871023	3 WHEELS	DRIVER	16	M	CHAMBERSBURG	FRANKLIN	PA	COLLISION	WITH TRUCK
10	871015	UNKNOWN	DRIVER	28	M	ELMIRA		NY	COLLISION	HIT EMBANKMENT/THROWN
11	871012	3 WHEELS	DRIVER	23	M	CAERNARVON TWP	BERKS	PA	COLLISION	STRUCK DEER/THROWN
12	871011	3 WHEELS	PASSENGER	06	F	WESTVILLE		IN	COLLISION	HIT CAR/THROWN
13	871010	UNKNOWN	UNKNOWN	09	M	BIRMINGHAM	JEFFERSON	AL	OVERTURNED	
14	871007	3 WHEELS	DRIVER	74	M		GRANT	OR	OVERTURNED	STRUCK SAGEBRUSH
15	871005	3 WHEELS	DRIVER	00	M		LEXINGTON	SC	OVERTURNED	LANDED ON VICTIM
16	871004	4 WHEELS	DRIVER	50	M	OLD TOWN		MD	OVERTURNED	HEAD STRUCK ROCK
17	871003	3 WHEELS	DRIVER	27	M	CROOKED LAKE	CASS	MN	OVERTURNED	THROWN/LANDED ON VICTIM
18	870927	4 WHEELS	DRIVER	15	F	HARRISON	HAMILTON	OH	TERRAIN CHG	EMBANKMENT/THROWN
19	870926	3 WHEELS	DRIVER	10	M	MCKINLEY		NM	OVERTURNED	STRUCK WOOD PILE
20	870922	UNKNOWN	DRIVER	25	F			AZ	UNKNOWN	
21	870921	4 WHEELS	DRIVER	13	M	COLESVILLE	BROOME	NY	OTH OPER	HIT BY TRAIN
22	870920	UNKNOWN	UNKNOWN	40-	M	STE GENEVIEVE		MO	OVERTURNED	
23	870919	3 WHEELS	DRIVER	12	F	HARTFORD	GENEVA	AL	COLLISION	WITH TRUCK
24	870914	4 WHEELS	PASSENGER	04	F	ST CLOUD	STEARNS	MN	OVERTURNED	LANDED ON VICTIM
25	870913	3 WHEELS	DRIVER	31	M	LOUISA	LAWRENCE	KY	COLLISION	THROWN/STRUCK HEAD ON ROCK
26	870912	4 WHEELS	DR/OTH VEH	07	F	ALLENDALE		MI	COLLISION	ATV HIT GO CART

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

YEAR=87

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
27	870908	4 WHEELS	DRIVER	15	M	TOLEDO ,	LUCAS	OH	COLLISION	HIT TRAILER/THROWN
28	870908	4 WHEELS	DRIVER	11	F	STAMFORD	DELA	NY	COLLISION	STRUCK BUMP/THROWN
29	870906	3 WHEELS	DRIVER	38	M	SANDLAKE	TILLAMOOK	OR	COLLISION	HIT DUNE BUGGY/THROWN
30	870906	3 WHEELS	DRIVER	35	M	CENTERVILLE	HICKMAN	TN	OVERTURNED	THROWN/STRUCK HEAD
31	870905	3 WHEELS	DRIVER	41	M	HOUGHTON LAKE		MI	OVERTURNED	THROWN INTO OTHER VEHICLE
32	870901	UNKNOWN	DRIVER	16	M	CHARLESTON	KANAWHA	WV	COLLISION	HIT GUARD RAIL.
33	870825	UNKNOWN	DRIVER	15	M	OGDEN	WEBER	UT	TERRAIN CHG	EMBANKMENT
34	870822	4 WHEELS	DRIVER	21	F		UMATILLA	OR	COLLISION	HIT TREE/THROWN
35	870821	4 WHEELS	DRIVER	16	M	FORT DODGE	WEBSTER	IA	COLLISION	HIT BY CAR
36	870820	3 WHEELS	DRIVER	13	F	MEMPHIS	POINSETT	TN	COLLISION	HIT BY CAR
37	870818	4 WHEELS	DRIVER	25	M	PARKERSBURG	WOOD	WV	COLLISION	HIT TREE/LANDED ON VICTIM
38	870816	4 WHEELS	DRIVER	25	M	ALLEN TWSP	OTTAWA	OH	COLLISION	STRUCK BANK
39	870816	UNKNOWN	UNKNOWN	20	M	NASHVILLE	DAVIDSON	TN	OVERTURNED	
40	870815	3 WHEELS	DRIVER	40	M	MALONE	FRAN	NY	COLLISION	HIT CAR
41	870814	4 WHEELS	DRIVER	21	M	TETLIN		AK	COLLISION	STRUCK BUMPS/OVERTURNED
42	870813	3 WHEELS	DRIVER	23	M	HUNTINGTON	CABELL	WV	TERRAIN CHG	INTO DITCH
43	870812	3 WHEELS	UNKNOWN	36	M	EGEGIK		AK	COLLISION	HIT PARKED ATV/FLIPPED OVER
44	870811	3 WHEELS	DRIVER	69	F	DONGOLA		IL	OVERTURNED	STRUCK HOLE/LANDED ON VICTIM
45	870811	3 WHEELS	DRIVER	[illegible]	M	PHILLIPS	PRICE	WI	OVERTURNED	STRUCK BUMP/LANDED ON VICTIM
46	870807	3 WHEELS	DRIVER	28	M	KOKHANOK		AK	OVERTURNED	STRUCK BUMP/THROWN
47	870806	UNKNOWN	DRIVER	35	M	CHARLESTON	KANAWHA	WV	COLLISION	HIT TREE
48	870805	3 WHEELS	DRIVER	13	M	TULARE		CA	OVERTURNED	LANDED ON VICTIM
49	870801	3 WHEELS	DRIVER	39	F	SWEDE GROVE	MEEKER	MN	COLLISION	HIT BY CAR/THROWN
50	870801	3 WHEELS	DRIVER	26	M	KITTANNING	ARMSTRONG	PA	COLLISION	HIT TREE
51	870731	3 WHEELS	DRIVER	26	M	LUDLOW	GRAFTON	VT	COLLISION	HIT TREE/THROWN
52	870729	3 WHEELS	DRIVER	11	M	JACKSON		MI	OVERTURNED	THROWN

DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1 1987 THROUGH DEC 8,1987

-- YEAR=87 --

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
53	870728	4 WHEELS	DRIVER	20	M	BISMARCK	BURLEIGH	ND	COLLISION	HIT DRIVEWAY/AIRBORNE/THROWN
54	870727	3 WHEELS	PASSENGER	16	M	HAZARD	PERRY	KY	COLLISION	HIT TREE/THROWN
55	870726	4 WHEELS	DRIVER	30	M	ST CHARLES	ST CHARLES	MO	COLLISION	WITH CAR
56	870725	3 WHEELS	UNKNOWN	26	M	BALM	HILLSBOROUGH	FL	OVERTURNED	THROWN/LANDED ON VICTIM
57	870724	3 WHEELS	DRIVER	26	M	COMMERCE TWSP	OAKLAND	MI	OVERTURNED	LANDED ON VICTIM
58	870722	4 WHEELS	DRIVER	16	M	LITWAR		WV	OVERTURNED	THROWN
59	870720	4 WHEELS	PASSENGER	65	M	PARSONS		TN	OVERTURNED	STRUCK BY HANDLE BARS
60	870719	4 WHEELS	DRIVER	16	M	WASHINGTON	WASHINGTON	UT	OVERTURNED	THROWN/HIT VICTIM
61	870716	3 WHEELS	DRIVER	12	M	HARRIS TWP		MI	FELL	LANDED ON VICTIM
62	870715	3 WHEELS	DRIVER	08	M	RAYMOND	MARIPOSA	CA	OVERTURNED	THROWN
63	870714	3 WHEELS	PASSENGER	08	M	AYR	ADAMS	NE	OVERTURNED	THROWN
64	870714	4 WHEELS	DRIVER	66	M	KETTLE FALLS	STEVENS	WA	TERRAIN CHG	DROVE OFF 100 FT CLIFF
65	870707	3 WHEELS	DRIVER	10	M	EDISON	KERN	CA	OVERTURNED	LANDED ON VICTIM
66	870707	4 WHEELS	DRIVER	11	F	CLOVIS	CURRY	NM	OVERTURNED	LANDED ON VICTIM
67	870707	3 WHEELS	DRIVER	13	M	CADIZ	TRIGG	KY	COLLISION	HIT TREES/LANDED ON VICTIM
68	870706	4 WHEELS	UNKNOWN	26	M	KANSAS	JACKSON	MO	OVERTURNED	LANDED ON VICTIM
69	870706	4 WHEELS	DRIVER	20	M	MALCOLM	POWESHIEK	IA	COLLISION	HIT BY TRUCK
70	870706	3 WHEELS	DRIVER	14	M	L'ANSE		MI	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
71	870705	3 WHEELS	DRIVER	15	F	CENTRE	CHEROKEE	AL	COLLISION	HIT ROAD BARRICADE
72	870704	3 WHEELS	DRIVER	18	F	LYNN HAVEN	BAY	FL	COLLISION	WITH TRUCK
73	870704	3 WHEELS	DRIVER	15	M	EMERSON	COLUMBIA	AR	COLLISION	HIT TREE
74	870704	3 WHEELS	DRIVER	20	M	SOMERSET	SOMERSET	PA	COLLISION	STRUCK R R TRAFFIC SWITCH
75	870703	3 WHEELS	DRIVER	22	M	HOPE	ALGER	MI	COLLISION	HIT TREE/THROWN
76	870703	4 WHEELS	DRIVER	13	M	PORT ISABEL	CAMERON	TX	OVERTURNED	LANDED ON VICTIM
77	870627	3 WHEELS	DRIVER	17	M	WAUTOMA	WAUSHARA	WI	COLLISION	HIT TREES/THROWN
78	870624	3 WHEELS	DRIVER	12	M	PADUCAH	MCCRACKEN	KY	COLLISION	HIT BY TRUCK

DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

-- YEAR=87 --

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
79	870622	3 WHEELS	DRIVER	40	M	LEHI	UTAH	UT	OVERTURNED	STRUCK BY HANDLE BARS
80	870621	3 WHEELS	DRIVER	22	M	CARLISLE	CUMBERLAND	PA	COLLISION	HIT TREE/THROWN
81	870619	3 WHEELS	DRIVER	15	M	RICKETTS	CRAWFORD	IA	COLLISION	HIT TRUCK
82	870619	3 WHEELS	DRIVER	09	M	OCILLA	IRWINN	GA	THROWN	LANDED ON VICTIM
83	870619	3 WHEELS	PASSENGER	09	M	HICKORY	GRAVES	KY	COLLISION	HIT BY TRUCK
84	870619	UNKNOWN	DRIVER	24	M	SPRING	CHESTER	PA	UNKNOWN	
85	870618	3 WHEELS	DRIVER	24	M	ROYERSFORD	MONTGOMERY	PA	COLLISION	HIT BRIDGE/THROWN
86	870614	4 WHEELS	DRIVER	06	M	COLVILLE	STEVENS	WA	COLLISION	HIT TREE/THROWN
87	870614	4 WHEELS	DRIVER	24	M	JOHNSBURG		NY	COLLISION	HIT TREE
88	870613	4 WHEELS	DRIVER	12	M	SILVER CREEK	WRIGHT	MN	OVERTURNED	LANDED ON VICTIM
89	870613	4 WHEELS	DRIVER	34	M	SPENCER	TIOGA	NY	COLLISION	HIT CAR/THROWN
90	870612	4 WHEELS	DRIVER	40	M	STEPHENSON		VA	THROWN	HEAD STRUCK TREE
91	870611	3 WHEELS	DRIVER	28	M	PINE BLUFF	JEFFERSON	AR	TERRAIN CHG	OFF EMBANKMENT/INTO RIVER
92	870607	4 WHEELS	DRIVER	09	F	CAMDEN POINT	PLATTE	MO	COLLISION	HIT BY TRUCK/THROWN
93	870606	3 WHEELS	DRIVER	27	M	BIG PRARIE TWP		MI	COLLISION	HIT OTHER ATV
94	870606	3 WHEELS	DRIVER	28	M	BIG PRARIE TWP		MI	COLLISION	HIT OTHER ATV
95	870605	3 WHEELS	DRIVER	13	M	PRESCOTT	PIERCE	WI	COLLISION	HIT HAY WAGON/THROWN
96	870601	3 WHEELS	PASSENGER	20	M	CRAWFORD		NY	COLLISION	HIT TRUCK
97	870601	3 WHEELS	DRIVER	20	M	CRAWFORD		NY	COLLISION	HIT TRUCK
98	870600	UNKNOWN	DRIVER	00	M			UT	UNKNOWN	
99	870531	3 WHEELS	DRIVER	21	M	COWEN	BRAXTON	WV	COLLISION	HIT POST/AIRBORNE/HIT TREE
100	870529	3 WHEELS	DRIVER	11	F	HOLLYWOOD	BROWARD	FL	COLLISION	HIT UTILITY POLE/THROWN
101	870528	3 WHEELS	DRIVER	11	M	MILO TWP	BUREAU	IL	COLLISION	THROWN
102	870526	3 WHEELS	DRIVER	16	M		VENTURA	CA	COLLISION	HIT BY CAR
103	870526	UNKNOWN	UNKNOWN	24	F	OMAHA	DOUGLAS	NE	COLLISION	HIT STEEL CABLE
104	870525	3 WHEELS	DRIVER	19	M	MONROE	GREEN	WI	COLLISION	HIT VAN

YEAR=87

OBS	INCIDDTH	ETYPEVEH	EVICTIM	EAGE	ESEX	ECITY	ECOUNTY	ESTATE	EHOW	ESUM
105	870525	3 WHEELS	PASSENGER	19	F	MONROE	GREEN	WI	COLLISION	HIT VAN
106	870525	3 WHEELS	DRIVER	26	M	LIBERTY	CLAY	WV	COLLISION	HIT OTHER ATV/THROWN
107	870523	4 WHEELS	DRIVER	38	M	PRINCETON	JOHNSTON	NC	COLLISION	HIT TREE/THROWN
108	870524	3 WHEELS	DRIVER	55	M	MT TABOR	RUTLAND	VT	THROWN	STRUCK DEPRESSION
109	870524	3 WHEELS	DRIVER	24	F	NEBRASKA	NANCE	NE	COLLISION	HIT CABLE/FELL
110	870522	4 WHEELS	DRIVER	10	M	MAXTON	ROBESON	NC	OVERTURNED	TIRE RIM STRUCK HEAD
111	870522	4 WHEELS	DRIVER	15	F	FLOYD KNOBS	FLOYD	IN	OVERTURNED	THROWN
112	870521	4 WHEELS	DRIVER	12	M	BARRACKVILLE	MARION	WV	COLLISION	HIT TREE/THROWN
113	870518	3 WHEELS	DRIVER	[illegible]	M	RICHARDTON	DUNN	ND	OVERTURNED	LANDED ON VICTIM
114	870513	4 WHEELS	DRIVER	16	M	ARKADELPHIA		AR	TERRAIN CHG	DROVE OVER RETAINING WALL
115	870512	3 WHEELS	DRIVER	33	M	HOPKINSVILLE	CHRISTIAN	KY	COLLISION	STRUCK DITCH/THROWN
116	870510	4 WHEELS	DRIVER	21	M	RIDGWAY TWSP	ELK	PA	COLLISION	HIT TREE
117	870510	4 WHEELS	DRIVER	[illegible]	F	RICHFORD		VT	COLLISION	HIT CABLE
118	870510	4 WHEELS	DRIVER	33	M	PARKER	FREMONT	ID	COLLISION	WITH OTHER ATV/THROWN
119	870503	UNKNOWN	PASSENGER	[illegible]	M	INDIO	RIVERSIDE	CA	THROWN	
120	870501	3 WHEELS	DRIVER	[illegible]	M	WEST BRANCH	OGEMAW	MI	COLLISION	HIT STUMP/THROWN
121	870500	4 WHEELS	DRIVER	34	M	COLUMBUS	FRANKLIN	OH	COLLISION	HIT POLE/HEAD STRUCK PIPE
122	870430	4 WHEELS	DRIVER	31	M	ASHER	LESLIE	KY	OVERTURNED	LANDED ON VICTIM
123	870428	3 WHEELS	DRIVER	43	M	MAUD	BOWIE	TX	OVERTURNED	THROWN
124	870427	4 WHEELS	DRIVER	25	M	BERLIN	RENSSELAER	NY	OVERTURNED	LANDED ON VICTIM
125	870425	3 WHEELS	DRIVER	22	F	DEARY		ID	THROWN	
126	870419	3 WHEELS	DRIVER	16	M	WITTMANN	MARICOPA	AZ	OVERTURNED	STRUCK DIP/THROWN
127	870419	UNKNOWN	UNKNOWN	15	M	YUMA	YUMA	AZ	UNKNOWN	
128	870419	UNKNOWN	UNKNOWN	22	M	VICTORVILLE	SAN BERNARDINO	CA	THROWN	
129	870417	3 WHEELS	DRIVER	11	M	CHOCOWINITY	BEAUFORT	NC	OVERTURNED	STRUCK BUMP/LANDED ON VICTIM
130	870411	3 WHEELS	DRIVER	21	M	GRAND CANYON NP	COCONINO	AZ	TIPPED	CHEST HIT TREE

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DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

YEAR=87

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
131	870412	4 WHEELS	DRIVER	18	M	RENTON	KING	WA	OVERTURNED	THROWN/STRUCK BY ATV
132	870412	4 WHEELS	DRIVER	40	M	SHOALS	MARTIN	IN	OVERTURNED	LANDED ON VICTIM
133	870411	3 WHEELS	DRIVER	18	M	MADISON	DANE	WI	THROWN	VICTIM HIT TREE
134	870405	3 WHEELS	DRIVER	13	M	PRINCETON	IREDELL	NC	OVERTURNED	LANDED ON VICTIM
135	870405	4 WHEELS	DRIVER	21	M	WASHINGTON	FRANKLIN	MO	THROWN	STRUCK DITCH
136	870402	3 WHEELS	DRIVER	21	M	HILLSBORO	WASHINGTON	OR	COLLISION	WITH CAR
137	870402	3 WHEELS	PASSENGER	22	M	HILLSBORO	WASHINGTON	OR	COLLISION	WITH CAR
138	870402	4 WHEELS	DRIVER	08	M	LAKE TAPPS	PIERCE	WA	OVERTURNED	THROWN/STRUCK BY ATV
139	870331	4 WHEELS	DRIVER	31	M	CROSS PLAINS	DANE	WI	COLLISION	HIT ANOTHER ATV/THROWN
140	870329	3 WHEELS	DRIVER	21	M	SALISBURY		CT	COLLISION	HIT CAR
141	870328	4 WHEELS	PASSENGER	17	F	FORESTBURGH	SULLIVAN	NY	COLLISION	HIT LOG/LANDED ON VICTIM
142	870323	3 WHEELS	DRIVER	10	M	NEW GALILEE	LAWRENCE	PA	OVERTURNED	LANDED ON VICTIM
143	870323	UNKNOWN	UNKNOWN	67	M	BIG RIVER	SAN BERNARDINO	CA	TERRAIN CHG	EMBANKMENT
144	870322	4 WHEELS	DRIVER	05	M	ST IGNACE	MACKINAC	MI	OVERTURNED	LANDED ON VICTIM
145	870321	4 WHEELS	DRIVER	52	M	GOSHEN	GOSHEN	VA	COLLISION	HIT ROLL OF FENCING/THROWN
146	870313	4 WHEELS	DRIVER	28	M	VAN BUREN	CRAWFORD	AR	COLLISION	HIT ANOTHER ATV
147	870313	3 WHEELS	DRIVER	27	M	CINCINNATI	HAMILTON	OH	OVERTURNED	
148	870308	3 WHEELS	DRIVER	08	M	HARRISBURG	POINSETT	AR	OVERTURNED	LANDED ON VICTIM
149	870306	4 WHEELS	DRIVER	14	M	GEORGETOWN	GEORGETOWN	SC	COLLISION	HIT BY TRUCK
150	870306	4 WHEELS	PASSENGER	14	M	GEORGETOWN	GEORGETOWN	SC	COLLISION	HIT BY TRUCK
151	870301	UNKNOWN	DRIVER	73	M	MORGAN TOWN	MENONGALIA	WV	THROWN	
152	870221	UNKNOWN	DRIVER	36	M	BALLINGER	VENTURA	CA	UNKNOWN	
153	870220	3 WHEELS	PASSENGER	04	M	EUREKA		IL	OVERTURNED	THROWN
154	870215	3 WHEELS	PASSENGER	16	F	INDIANAPOLIS	MARION	IN	COLLISION	HEAD HIT METAL ANGLE SUPPORT
155	870214	3 WHEELS	DRIVER	47	M	HOWARD PRAIRIE	JACKSON	OR	TERRAIN CHG	FELL THROUGH ICE INTO WATER
156	870214	4 WHEELS	DRIVER	49	M	HOWARD PRAIRIE	JACKSON	OR	TERRAIN CHG	FELL THROUGH ICE INTO WATER

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
157	870210	3 WHEELS	DRIVER	67	M	ENUMCLAW		WA	OVERTURNED	FELL
158	870206	4 WHEELS	PASSENGER	23	M	COMMERCE	OAKLAND	MI	TERRAIN CHG	FELL IN LAKE
159	870130	4 WHEELS	DRIVER	13	M	TOONSUBA	LAUDERDALE	MS	COLLISION	STRUCK CABLE
160	870130	4 WHEELS	PASSENGER	13	M	TOOMSUBA	LAUDERDALE	MS	COLLISION	STRUCK CABLE
161	870126	3 WHEELS	DRIVER	41	M	ROCK ISLAND	ROCK ISLAND	IL	OVERTURNED	THROWN
162	870126	3 WHEELS	PASSENGER	05	M	NEKOOSA	WOOD	WI	OTH OPER	STRUCK RUTS/HEAD JARRED
163	870125	4 WHEELS	DRIVER	27	M	CLAY TOWNSHIP		MI	COLLISION	WITH CAR
164	870120	3 WHEELS	DRIVER	12	M	FAYETTEVILLE	CUMBERLAND	NC	COLLISION	HIT TREE
165	870117	3 WHEELS	DRIVER	20	M	NEWBURGH		NY	OVERTURNED	THROWN
166	870116	3 WHEELS	DRIVER	24	M	ALTAMONT		IL	OVERTURNED	STRUCK DITCH/THROWN
167	870109	3 WHEELS	DRIVER	31	M	WICHITA	SEDGWICK	KS	COLLISION	STRUCK GULLEY/THROWN
168	870106	3 WHEELS	DRIVER	50	M	BUTNER	YADKIN	NC	OVERTURNED	STRUCK BY HANDLEBAR
169	870105	3 WHEELS	DRIVER	47	M	AUSTIN	BURLESON	TX	COLLISION	HIT DIRT BIKE/THROWN
170	870104	3 WHEELS	UNKNOWN	38	M	LOWVILLE TWSP	LEWIS	NY	COLLISION	STRUCK POLE
171	870102	3 WHEELS	DRIVER	16	M	POLK	POLK	MN	OVERTURNED	LANDED ON VICTIM
172	870102	4 WHEELS	DRIVER	82	M	GREEN LAKE		WI	OVERTURNED	LANDED ON VICTIM

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DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
173	861231	3 WHEELS	DRIVER	15	M	WAUWATOSA	MILWAUKEE	WI	COLLISION	HIT TREE
174	861228	3 WHEELS	DRIVER	29	M	EASTLAKE	LAKE	OH	OVERTURNED	THROWN
175	861227	3 WHEELS	DRIVER	53	M	KOSCIUSKO	ATTALA	MS	COLLISION	HIT TRUCK
176	861227	3 WHEELS	DRIVER	21	M	GREENWATER		WA	TERRAIN CHG	INTO CREEK/LANDED ON VICTIM
177	861224	3 WHEELS	DRIVER	22	M	STURGIS		MI	OVERTURNED	THROWN/VICTIM HIT EMBANKMENT
178	861221	3 WHEELS	DRIVER	32	M	ALEXANDRIA TWSP	HUNTERDON	NJ	OVERTURNED	LANDED ON VICTIM
179	861219	3 WHEELS	DRIVER	11	M	GRAVETTE	BENTON	AR	OVERTURNED	LANDED ON VICTIM
180	861215	3 WHEELS	PASSENGER	14	M	SWEETWATER	NOLAN	TX	COLLISION	HIT BY TRUCK
181	861215	3 WHEELS	DRIVER	14	M	SWEETWATER	NOLAN	TX	COLLISION	HIT BY TRUCK
182	861215	4 WHEELS	DRIVER	22	M	SHARON SPRINGS		NY	OVERTURNED	LANDED ON VICTIM
183	861206	4 WHEELS	DRIVER	13	F		CLARK	NV	COLLISION	HIT BY CAR
184	861206	4 WHEELS	PASSENGER	14	F		CLARK	NV	COLLISION	HIT BY CAR
185	861206	4 WHEELS	DRIVER	23	M	W. CONSHOHOCKEN	MONTGOMERY	PA	COLLISION	HIT ABUTMENT/THROWN
186	861206	3 WHEELS	DRIVER	14	M	GLENWOOD		AR	OVERTURNED	LANDED ON VICTIM
187	861203	4 WHEELS	DRIVER	53	M	PADUCAH	COTTLE	TX	ATV CONTACT	STRUCK DITCH/HIT HEAD ON ATV
188	861130	3 WHEELS	PASSENGER	13	F	MARYSVILLE	YUBA	CA	COLLISION	STRUCK BUMP/FLIPPED/THROWN
189	861124	4 WHEELS	DRIVER	19	M	SUGAR GROVE	PENDLETON	WV	COLLISION	TRUCK HIT ATV
190	861124	UNKNOWN	DRIVER	15	M	PHOENIX	MARICOPA	AZ	TERRAIN CHG	INTO CANAL/LANDED ON VICTIM
191	861122	3 WHEELS	DRIVER	34	M		JEFFERSON	CO	TERRAIN CHG	EMBANKMENT/INTO RIVER
192	861121	3 WHEELS	DRIVER	17	M	AMARILLO	RANDALL	TX	COLLISION	HIT CAR
193	861115	3 WHEELS	DRIVER	22	M	LOCKPORT		NY	COLLISION	HIT BY TRUCK
194	861114	3 WHEELS	DRIVER	34	M	BROOKS TWP	NEWAYGO	MI	OVERTURNED	LANDED ON VICTIM
195	861108	UNKNOWN	UNKNOWN	29	M	NAPOLEON	HENRY	OH	UNKNOWN	
196	861107	4 WHEEL'S	DRIVER	12	M	ANDREWS	ANDREWS	TX	TERRAIN CHG	OVERTURNED/LANDED ON VICTIM
197	861106	3 WHEELS	DRIVER	20	M	JACKSONVILLE	DUVAL	FL	OVERTURNED	HIT CULVERT/LANDED ON VICTIM
198	861104	UNKNOWN	UNKNOWN	14	M	WILLOWS	GLENN	CA	THROWN	

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                               DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES                                  9
                                REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987          17:16 FRIDAY, FEBRUARY 5, 1988

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OBS  FDATEDTH  FTYPEVEH   FVICTIM    FAGE  FSEX  FCITY             FCOUNTY          FSTATE  FHP         FSUM

199   861102   3 WHEELS   DRIVER      23    M    MAUMEE            LUCAS              OH    COLLISION   HIT TREES
200   861031   3 WHEELS   DRIVER      11    F    ALGOMA            KEWAUNEE           WI    OVERTURNED  STRUCK BUMP/LANDED ON VICTIM
201   861031   3 WHEELS   DRIVER      15    M    FRANKFORT                            OH    OVERTURNED  LANDED ON VICTIM
202   861030   3 WHEELS   PASSENGER   16    M    MILLVILLE                            NJ    COLLISION   HIT MOTORCYCLE
203   861029   3 WHEELS   DRIVER      16    M    MILLVILLE                            NJ    COLLISION   HIT MOTORCYCLE
204   861029   3 WHEELS   UNKNOWN     19    F    CHESTER                              IL    FELL
205   861026   4 WHEELS   DRIVER      23    M    SHICKSHINNY       LUZERNE            PA    COLLISION   HIT CABLE
206   861026   3 WHEELS   PASSENGER   08    M    COALVILLE         SUMMIT             UT    THROWN      STRUCK HEAD
207   861026   3 WHEELS   DRIVER      24    F    TAPPEN                               ND    OVERTURNED  STRUCK HOLE/LANDED ON VICTIM
208   861025   3 WHEELS   DRIVER      18    M    GALVESTON         GALVESTON          TX    COLLISION   HIT TEL. POLE/THROWN
209   861022   3 WHEELS   DRIVER      06    M    AUSTIN            TRAVIS             TX    OVERTURNED  LANDED ON VICTIM
210   861021   3 WHEELS   UNKNOWN     13    F    BRIDGEPORT TWSP                      MI    COLLISION   HIT TRUCK/THROWN
211   861018   3 WHEELS   PASSENGER   18    M    CORDELL           WASHITA            OK    THROWN      RUN OVER BY TRACTOR WHEEL
212   861018   3 WHEELS   DRIVER      13    M    VICTORVILLE       SAN BERNARDINO     CA    COLLISION   TRUCK HIT ATV
213   861018   3 WHEELS   PASSENGER   12    M    VICTORVILLE       SAN BERNARDINO     CA    COLLISION   TRUCK HIT ATV
214   861018   4 WHEELS   DRIVER      32    M    PETERSBURG        GRANT              WV    OTH OFER    CARRYING CROSSBOW/DISCHARGED
215   861017   4 WHEELS   DRIVER      14    M    FRANKFORT TWP                        MN    COLLISION   ATV HIT CAR
216   861012   3 WHEELS   UNKNOWN     15    M    FRANKFORT         ROSS               OH    OVERTURNED  LANDED ON VICTIM
217   861011   3 WHEELS   DRIVER      14    F    GRUNDY            GRUNDY             TN    THROWN      STRUCK HOLE
218   861008   UNKNOWN    UNKNOWN     09    M    SALIDA            CHAFFEE            CO    COLLISION   STRUCK CABLE
219   861004   3 WHEELS   DRIVER      05    M    OCOTILLO WELLS    SAN DIEGO          CA    OVERTURNED  STRUCK RUT/THROWN
220   861004   3 WHEELS   DRIVER      33    M    GIVEN             KANAWHA            WV    COLLISION   HIT TREE/THROWN
221   861003   4 WHEELS   DRIVER      49    M    HAYESVILLE        CLAY               NC    OVERTURNED  LANDED ON VICTIM
222   860930   4 WHEELS   DRIVER      14    M    OLD FIELDS        HARDY              WV    COLLISION   HIT DITCH/OVERTURNED ON VICTIM
223   860928   4 WHEELS   PASSENGER   16    M    EVANSVILLE        VANDERBURGH        IN    THROWN      PANTS LEG CAUGHT IN WHEEL
224   860927   3 WHEELS   DRIVER      14    M    MIRAMAR           BROWARD            FL    THROWN      STRUCK POT HOLE
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DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987

17:16 FRIDAY, FEBRUARY 5, 1988

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
225	860927	4 WHEELS	DRIVER	44	M	HARRISON		MI	THROWN	HEAD HIT TREE
226	860927	3 WHEELS	DRIVER	13	M	PARADISE	LANCASTER	PA	OVERTURNED	THROWN OFF
227	860925	4 WHEELS	DRIVER	69	M	MAGDALENA		NM	OTH OPER	CARRYING GUN/ACCIDENTLY SHOT
228	860918	3 WHEELS	DRIVER	19	M	WILSON TWP	CASS	MN	COLLISION	HIT POWER POLE
229	860915	3 WHEELS	DRIVER	26	F	KOTZEBUE		AK	OVERTURNED	THROWN
230	860915	4 WHEELS	DRIVER	14	M	JONESBORO	CRAIGHEAD	AR	TERRAIN CIRC	OVER TRACK/LANDED ON VICTIM
231	860913	3 WHEELS	DRIVER	17	F	SAYLERSVILLE		KY	COLLISION	HIT BY CAR
232	860913	3 WHEELS	DRIVER	23	M	SEDALIA	PETTIS	MO	THROWN	RAMPING ATV/HIT TREE
233	860911	3 WHEELS	DRIVER	15	M			AL	COLLISION	HIT BY TRUCK
234	860908	3 WHEELS	DRIVER	17	M	WINFIELD	COWLEY	KS	COLLISION	HIT OTHER ATV/OVERTURNED
235	860908	4 WHEELS	PASSENGER	01	M	HENDERSON	HENDERSON	KY	OVERTURNED	THROWN/STRUCK BY HANDLEBARS
236	860906	3 WHEELS	PASSENGER	12	F	MINOT	WARD	ND	FELL	CAUGHT BY HANDLE BAR
237	860906	UNKNOWN	DRIVER	13	M	KALAMAZOO		WI	ATV CONTACT	DOWN SHIFTED/HIT BY HANDLEBARS
238	860906	3 WHEELS	DRIVER	09	M	KEARNEY	BUFFALO	NE	COLLISION	HIT POST/LANDED ON VICTIM
239	860906	3 WHEELS	PASSENGER	13	M	KEARNEY	BUFFALO	NE	COLLISION	HIT POST/LANDED ON VICTIM
240	860905	3 WHEELS	DRIVER	19	M	MOUNT WOLF	MILL HALL	PA	COLLISION	HIT TREE
241	860902	4 WHEELS	DRIVER	16	M	WALLED LAKE		MI	OVERTURNED	LANDED ON VICTIM
242	860901	4 WHEELS	DRIVER	41	M	SALISBURY	HERKIMER	NY	THROWN	MISSED CURVE/THROWN INTO TREE
243	860901	3 WHEELS	PASSENGER	25	M	GHENT	ALBANY	NY	THROWN	SHIFTED GEARS/ATV JERKED
244	860901	3 WHEELS	DRIVER	86	M	MAYFLOWER	FAULKNER	AR	COLLISION	HIT BY CAR
245	860831	4 WHEELS	DRIVER	14	M	BELLAIRE		MI	COLLISION	HIT TREE
246	860830	4 WHEELS	DRIVER	44	F	BAKER	FALLON	MT	OVERTURNED	LANDED ON VICTIM
247	860830	4 WHEELS	DRIVER	63	M	ODENVILLE	ST CLAIR	AL	COLLISION	HIT TREE
248	860829	4 WHEELS	DRIVER	26	F	NORWOOD	EMMET	MI	OVERTURNED	STRUCK BY HANDLEBARS
249	860827	4 WHEELS	PASSENGER	13	F	MERIDEN		CT	COLLISION	HIT TREE/THROWN
250	860826	4 WHEELS	UNKNOWN	15	F	COLUMBUS	FRANKLIN	OH	UNKNOWN	

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
251	860825	3 WHEELS	PASSENGER	09	F	ST PAULS	ROBESON	NC	OVERTURNED	BRAKED TO AVOID DOG/THROWN
252	860824	3 WHEELS	DRIVER	37	M	LILBURN	GWINNETT	GA	COLLISION	HIT TREE
253	860824	3 WHEELS	DRIVER	14	F	SEBASTIAN	INDIAN RIVER	FL	THROWN	R WHEEL HIT HEAD
254	860824	3 WHEELS	DRIVER	25	M	CARTHAGE	LEAKE	MS	TERRAIN CHG	RAN INTO 2 FT DITCH/THROWN
255	860823	3 WHEELS	DRIVER	18	M	SAN MARCOS	SAN DIEGO	CA	COLLISION	WITH TRUCK
256	860823	4 WHEELS	PASSENGER	07	M	JANESVILLE	ROCK	WI	OVERTURNED	LANDED ON VICTIM
257	860821	3 WHEELS	DRIVER	15	M	LONG LANE	CROW WING	MN	COLLISION	TRUCK HIT ATV
258	860820	4 WHEELS	DRIVER	04	M	COUNCIL GROVE	MORRIS	KS	COLLISION	HIT FENCE/THROWN
259	860820	3 WHEELS	DRIVER	09	M	FRESNO	FRESNO	CA	FELL	STRUCK TREE BRANCH
260	860817	3 WHEELS	DRIVER	20	M	JAY	FRANKLIN	ME	COLLISION	HIT POLE/THROWN
261	860817	4 WHEELS	DRIVER	15	M	CUMBERLAND	ALLEGANY	MD	THROWN	VICTIM HIT LARGE ROCK
262	860817	3 WHEELS	DRIVER	30	M	AKRON		OH	COLLISION	HIT CAR/THROWN/ATV BURNED
263	860817	3 WHEELS	DRIVER	17	M	FORWARD TWP	ALLEGHENY	PA	COLLISION	HIT TEL POLE
264	860817	3 WHEELS	DRIVER	27	M	STATENVILLE	ECHOLS	GA	THROWN	VICTIM HIT TREE
265	860816	3 WHEELS	DRIVER	10	M	WHEELER	CHEYENNE	KS	OVERTURNED	THROWN
266	860816	3 WHEELS	DRIVER	30	M	TACOMA	PIERCE	WA	COLLISION	HIT TREE
267	860815	4 WHEELS	DRIVER	10	M	VINCENNES	PIGEON	NM	COLLISION	HIT BY CAR
268	860815	3 WHEELS	DRIVER	27	M	UVALDA	MONTGOMERY	GA	COLLISION	HIT TREE/THROWN
269	860814	3 WHEELS	DRIVER	17	M	MONROE	OUACHITA	LA	COLLISION	HIT TREES
270	860813	3 WHEELS	PASSENGER	06	M	ADRIAN		OH	COLLISION	HIT BY CAR
271	860809	3 WHEELS	DRIVER	08	M	BRIDGEPORT	JACKSON	AL	COLLISION	IMPALED ON TREE LIMB
272	860809	4 WHEELS	PASSENGER	11	M	FAIRVIEW	SANPETE	UT	FELL	RUN OVER BY ATV
273	860808	3 WHEELS	PASSENGER	13	M		JEFFERSON	MO	COLLISION	HIT TREE/THROWN
274	860807	3 WHEELS	DRIVER	26	M	ROYAL PALM BCH	PALM BEACH	FL	COLLISION	HIT OTHER ATV/LANDED ON VICTIM
275	860803	3 WHEELS	DRIVER	19	M	MESILLA DAM	DONA ANA	NM	TERRAIN CHG	8-FT DROP/LANDED ON VICTIM
276	860802	3 WHEELS	DRIVER	21	F	FALLON	CHURCHILL	NV	OVERTURNED	LANDED ON VICTIM

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
277	860730	4 WHEELS	DRIVER	48	M	EVANSVILLE	VANDERBURG	IN	THROWN	STRUCK CABLE
278	860729	3 WHEELS	DRIVER	18	M	CROSSVILLE	CUMBERLAND	TN	THROWN	
279	860728	3 WHEELS	DRIVER	12	M	WARROAD		MN	COLLISION	HIT BY CAR
280	860727	3 WHEELS	DRIVER	17	M	MORGANTOWN	MONONGALIA	WV	COLLISION	HIT TREE/THROWN
281	860726	3 WHEELS	DRIVER	25	M	GARLAND	SAMPSON	NC	COLLISION	HIT BY CAR
282	860726	3 WHEELS	DRIVER	33	M	DULUTH	ST LOUIS	MI	COLLISION	STRUCK CULVERT/OVERTURNED
283	860726	3 WHEELS	DRIVER	36	M	SAND LAKE	TILLAMOOK	OR	COLLISION	HIT DUNE BUGGY/THROWN
284	860725	3 WHEELS	DRIVER	14	M		CIBOLA	NM	COLLISION	ATV SKIDDED/HIT WALL
285	860725	3 WHEELS	DRIVER	17	M	GRAND RAPIDS		MI	THROWN	STRUCK CABLE
286	860724	3 WHEELS	DRIVER	32	M	COLUMBUS TWNSP	PLATTE	NE	OVERTURNED	STRUCK MOUND/THROWN
287	860723	3 WHEELS	DRIVER	20	M	ROUNDUP	MUSSELSHELL	MT	COLLISION	HIT BARBED WIRE FENCE/THROWN
288	860723	3 WHEELS	DRIVER	15	F	ROCHESTER		NY	OVERTURNED	LANDED ON VICTIM
289	860723	4 WHEELS	PASSENGER	13	M	AUGUSTA		ME	THROWN	STRUCK CABLE
290	860723	3 WHEELS	DRIVER	20	M	PRESCOTT	MARICOPA	AZ	COLLISION	HIT TREES
291	860722	4 WHEELS	DRIVER	09	M	PARSONS	DECATUR	TN	COLLISION	HIT BY CAR
292	860720	3 WHEELS	DRIVER	39	M	BYRON		NY	OVERTURNED	STRUCK HAY MOUND/THROWN
293	860719	3 WHEELS	DRIVER	48	M	HUMBIRD	CLARK	WI	TERRAIN CHG	IN DITCH/LANDED ON VICTIM
294	860718	3 WHEELS	DRIVER	16	M	TUSCALOOSA	TUSCALOOSA	AL	COLLISION	HIT FALLEN TREE/THROWN
295	860718	3 WHEELS	PASSENGER	15	M	WINSTED	MCLEOD	MN	COLLISION	HIT POWER POLE/THROWN
296	860718	3 WHEELS	DR/OTH VEH	21	M	WELLSVILLE	COLUMBIANA	OH	COLLISION	WITH DIRT BIKE
297	860717	3 WHEELS	DRIVER	17	M	ELBERFELD	WARRICK	IN	COLLISION	WITH CAR
298	860717	4 WHEELS	DRIVER	07	F	REDFIELD		AR	COLLISION	HIT TREE/OVERTURNED ON VICTIM
299	860717	3 WHEELS	UNKNOWN	12	M	COON RAPIDS		MN	OVERTURNED	
300	860716	3 WHEELS	DRIVER	61	M	SPRUCE CREEK	BLAIR	PA	OVERTURNED	LANDED ON VICTIM
301	860713	3 WHEELS	DRIVER	14	M	PARIS	MADISON	TN	OVERTURNED	LANDED ON VICTIM
302	860711	3 WHEELS	DRIVER	22	M	PERU	CLINTON	NY	COLLISION	HIT TRUCK

DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1 1982 THROUGH DEC 8 1987

17:16 FRIDAY, FEBRUARY 5, 1988

-- YEAR=86 --

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
303	860711	3 WHEELS	DRIVER	25	M	DALLAS	DALLAS	TX	COLLISION	HIT POSTS AND TRAILER
304	860711	4 WHEELS	DRIVER	13	M	PENRYN		PA	COLLISION	HIT BARRIER, TREES/THROWN
305	860707	3 WHEELS	DRIVER	09	M	BINGHAM LAKE	COTTONWOOD	MN	OVERTURNED	RAN OVER VICTIM
306	860706	3 WHEELS	DRIVER	19	M	SPOKANE	SPOKANE	WA	COLLISION	HIT POLE AND PARKED CAR
307	860706	3 WHEELS	UNKNOWN	16	M	VANCOUVER	CLARK	WA	THROWN	
308	860705	3 WHEELS	DRIVER	11	M	HORNELL		NY	COLLISION	WITH CAR
309	860705	4 WHEELS	PASSENGER	11	M	VILLENOVA	CHAUTAUQUA	NY	THROWN	STRUCK DITCH/AIRBORNE
310	860705	3 WHEELS	DRIVER	21	M	SYRACUSE	ONONDAGA	NY	COLLISION	HIT TREE
311	860704	3 WHEELS	DRIVER	13	M	DANVILLE		PA	COLLISION	HIT TRUCK/THROWN
312	860704	3 WHEELS	DRIVER	21	M	WAVERLY	PIKE	OH	COLLISION	HIT STORAGE BLDG/THROWN
313	860704	3 WHEELS	DRIVER	09	M	FREDERICKSBURG	SPOTSYLVANIA	VA	THROWN	STRUCK BUMP/LANDED ON VICTIM
314	860704	3 WHEELS	DRIVER	20	M	SOMERSET	SOMERSET	PA	COLLISION	STRUCK RAILROAD TRACKS/THROWN
315	860703	3 WHEELS	DRIVER	09	M	SMITHBORO		NY	COLLISION	HIT BY TRUCK
316	860703	3 WHEELS	DRIVER	22	M	WARRENSBURG	JOHNSON	MO	COLLISION	HIT OTHER ATV/LANDED ON VICTIM
317	860701	3 WHEELS	DRIVER	27	M	LITTLE ROCK	PULASKI	AR	COLLISION	HIT IRON GATES/THROWN
318	860630	3 WHEELS	DRIVER	23	M	PLACERVILLE	EL DORADO	CA	COLLISION	HIT TREE
319	860630	3 WHEELS	DRIVER	28	M	EL CENTRO	IMPERIAL	CA	TERRAIN CHG	INTO DITCH/THROWN
320	860630	4 WHEELS	DRIVER	13	M	WALES TWSP		MI	COLLISION	VAN HIT ATV
321	860629	3 WHEELS	DRIVER	17	M	LIVINGSTON		LA	COLLISION	HIT TRUCK/THROWN
322	860629	3 WHEELS	DRIVER	20	M	MINOR HILL	LAWRENCE	TN	COLLISION	WITH JEEP
323	860628	3 WHEELS	DRIVER	10	M	EAST OTTO	CATTARAUGUS	NY	COLLISION	HIT TREES
324	860628	3 WHEELS	DRIVER	47	F	WITTEN		SD	OVERTURNED	LANDED ON VICTIM
325	860623	3 WHEELS	DRIVER	13	M	[illegible]		MN	COLLISION	WITH ANOTHER ATV
326	860622	3 WHEEL'S	DRIVER	24	M	NINILCHIK		AK	COLLISION	WITH TRUCK
327	860622	3 WHEELS	DRIVER	18	M	MIAMI		OK	OVERTURNED	ON HILL/LANDED ON VICTIM
328	860622	4 WHEELS	DRIVER	08	M	HAVERHILL		MA	JUMPED OFF	STRUCK HEAD ON ATV

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
329	860621	3 WHEELS	DRIVER	19	M	NORFOLK		CT	COLLISION	HIT TREE/THROWN
330	860621	3 WHEELS	DRIVER	12	M	PHOENIX	LEE	AL	COLLISION	NECK HIT WIRE
331	860621	3 WHEELS	DRIVER	21	M	ROCKPORT		WV	COLLISION	HIT TREE/OVERTURNED
332	860620	4 WHEELS	DRIVER	10	M	DUMAS		AR	COLLISION	HIT BY SEMI TRAILER
333	860620	4 WHEELS	DRIVER	22	M		WASATCH	UT	COLLISION	HIT TREE/OVERTURND/HIT VICTIM
334	860620	3 WHEELS	DRIVER	19	M	GOODHUE		MN	COLLISION	WITH ANOTHER ATV
335	860616	3 WHEELS	DRIVER	10	M	NININGER TWP		MN	COLLISION	HIT BY CAR
336	860616	3 WHEELS	PASSENGER	11	M	COEUR D'ALENE		ID	TERRAIN CHG	EMBANKMENT/THROWN/HIT LOG
337	860616	3 WHEELS	DRIVER	53	M	DEVERS	LIBERTY	TX	OVERTURNED	STRUCK DIRT MOUNDS
338	860615	4 WHEELS	DRIVER	12	F	RUSSELLVILLE		AR	THROWN	STRUCK DITCH/HEAD HIT ROCKS
339	860614	3 WHEELS	DRIVER	23	M	MIAMI		FL	COLLISION	HIT CAR/THROWN
340	860612	UNKNOWN	DRIVER	12	M	BIG LAKE		MN	COLLISION	HIT CURB/OVERTURNED/HIT VICTIM
341	860611	3 WHEELS	DRIVER	11	M	EATONVILLE		WA	OVERTURNED	THROWN
342	860610	3 WHEELS	DR/OTH VEH	24	M	GILMANTON	BELKNAP	NH	COLLISION	WITH MOTORCYCLE
343	860607	3 WHEELS	DRIVER	16	M	NEW PORT	KNOX	TN	COLLISION	HIT TELEPHONE POLE
344	860606	4 WHEELS	DRIVER	06	M	WILBUR	LINCOLN	WA	OVERTURNED	THROWN
345	860604	4 WHEELS	DRIVER	17	M	PITTSFIELD		MA	COLLISION	HIT BY OTHER ATV/THROWN
346	860604	3 WHEELS	DRIVER	16	M	BARK RIVER	DELTA	MI	OVERTURNED	THROWN
347	860603	3 WHEELS	DRIVER	15	M	MATTAPOISETT		MA	COLLISION	HIT TREE
348	860603	3 WHEELS	DRIVER	22	F	ST MARYS		PA	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
349	860601	3 WHEELS	DRIVER	08	M	HEARNE	ROBERTSON	TX	COLLISION	HIT EMBANKMENT
350	860530	3 WHEELS	DRIVER	27	F	BEAUMONT	JEFFERSON	TX	COLLISION	STRUCK METAL/LANDED ON VICTIM
351	860529	3 WHEELS	DRIVER	23	M	DES MOINES	POLK	IA	COLLISION	HIT POLE
352	860527	3 WHEELS	DRIVER	09	M	DUMAS	MOORE	TX	OVERTURNED	LANDED ON VICTIM
353	860526	3 WHEELS	DRIVER	13	F	THOMASVILLE		PA	COLLISION	HIT BY AUTOMOBILE/THROWN
354	860526	3 WHEELS	DRIVER	27	M	CALUMET	FOND DU LAC	WI	THROWN	HEAD STRUCK ROCK

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL TERRAIN VEHICLES
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-- YEAR=86 --

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
355	860525	3 WHEELS	DRIVER	23	M	DOVER TWP		MI	COLLISION	HIT TREE
356	860525	3 WHEELS	DRIVER	15	M	HUNTSVILLE	WALKER	TX	COLLISION	HIT TRUCK
357	860525	UNKNOWN	DRIVER	30	M	RED ST ANTHONY	FREMONT	ID	OVERTURNED	LANDED ON VICTIM
358	860525	3 WHEELS	DRIVER	14	M	NASHVILLE	DAVIDSON	TN	TERRAIN CHG	FELL INTO WATER
359	860525	4 WHEELS	DRIVER	52	M	GLAMIS	IMPERIAL	CA	OVERTURNED	LANDED ON VICTIM
360	860524	3 WHEELS	DRIVER	23	M	HEBER CITY	WASATCH	UT	THROWN	HEAD STRUCK ROCK
361	860524	3 WHEELS	DRIVER	18	F	USK	PENDOREILLE	WA	TERRAIN CHG	EMBANKMENT/THROWN INTO TREE
362	860524	3 WHEELS	PASSENGER	21	F		STODDARD	MO	OVERTURNED	STRUCK ROCK/THROWN
363	860524	4 WHEELS	DRIVER	27	M	SAN BERNARDINO	SAN BERNARDINO	CA	THROWN	STRUCK ROCK
364	860523	3 WHEELS	DRIVER	64	M	WINNFIELD	WINN	LA	OVERTURNED	THROWN
365	860523	4 WHEELS	DRIVER	15	M	ROTTERDAM		NY	TERRAIN CHG	THROWN/ATV LANDED ON VICTIM
366	860522	3 WHEELS	DRIVER	13	M	LAKE LOUISE		AK	COLLISION	HIT BY RECREATION VEHICLE
367	860520	3 WHEELS	DRIVER	17	M	BANGOR		ME	COLLISION	HIT UTILITY POLE
368	860520	4 WHEELS	PASSENGER	03	M	ZANESVILLE		OH	OVERTURNED	LANDED ON VICTIM
369	860520	3 WHEELS	DRIVER	26	M	GRANITE CITY	MADISON	MO	COLLISION	HIT OTHER ATV
370	860518	3 WHEELS	DRIVER	21	M	RICHMOND		NY	COLLISION	HIT TREES/THROWN
371	860518	3 WHEELS	DRIVER	14	F	COLUMBUS		WI	COLLISION	HIT CAR
372	860517	3 WHEELS	DRIVER	23	M	MORGANTOWN		WV	OVERTURNED	THROWN
373	860517	4 WHEELS	DRIVER	21	M	N. PHILADELPHIA	TUSCARAWAS	OH	TERRAIN CHG	HIT TREE/FELL INTO RIVER
374	860516	3 WHEELS	DRIVER	29	M	EAST CARROLL		LA	COLLISION	HIT TRUCK
375	860516	3 WHEELS	PASSENGER	03	M	EAST CARROLL		LA	COLLISION	HIT TRUCK
376	860516	3 WHEELS	DRIVER	18	M	BAKERSFIELD		CA	COLLISION	HIT BY TRUCK
377	860516	3 WHEELS	DRIVER	35	M	SISSONVILLE		WV	TIPPED	HIT MANURE PILE
378	860515	3 WHEELS	DRIVER	17	M	LUNSFORD	LUNSFORD	AR	COLLISION	HIT TRUCK/THROWN
379	860515	4 WHEELS	DRIVER	13	M	BREMEN	CULLMAN	AL	OVERTURNED	LANDED ON VICTIM
380	860513	3 WHEELS	UNKNOWN	24	M	PAUL	MINIDOKA	ID	THROWN	

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
REPORTED FOR THE PERIOD JAN 1 1982 THROUGH DEC 8,1987

YEAR=86

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
381	860513	3 WHEELS	PASSENGER	15	M	MARSHFIELD	WOOD	WI	COLLISION	HIT ATV/LANDED ON VICTIM
382	860512	3 WHEELS	PASSENGER	10	F	DAYTON	HOWARD	MD	OVERTURNED	THROWN/HEAD HIT GROUND
383	860512	4 WHEELS	DRIVER	09	M	MARIANTHAL	WICHITA	KS	FELL	
384	860510	4 WHEELS	DRIVER	28	M	UKIAH	SONOMA	CA	COLLISION	HIT BUSH/OVER CLIFF/THROWN
385	860509	3 WHEELS	DR/OTH VEH	14	M	BAKERSFIELD	KERN	CA	COLLISION	ATV AND MOTORCYLE
386	860508	3 WHEELS	DRIVER	13	M	BAKERSFIELD	KERN	CA	COLLISION	ATV AND MOTORCYLE
387	860507	4 WHEELS	PASSENGER	12	M	JACKSON		MS	THROWN	STRUCK HOLE/LANDED ON VICTIM
388	860505	3 WHEELS	DRIVER	66	M	PLUM	ALLEGHENY	PA	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
389	860504	3 WHEELS	DRIVER	22	M	PAULS VALLEY		OK	TERRAIN CHG	JUMPING OFF 3FT EMBANKMENT
390	860504	4 WHEELS	DRIVER	14	M	COMMERCE	OAKLAND	MI	THROWN	ATV STRUCK VICTIM
391	860502	3 WHEELS	PASSENGER	31	F	LIBERTY	CASEY	KY	OVERTURNED	THROWN
392	860502	3 WHEELS	DRIVER	14	M	WILLIAMSTON		MI	COLLISION	NECK HIT STEEL CABLE
393	860430	3 WHEELS	BYSTANDER	13	M	FT LAUDERDALE	BROWARD	FL	COLLISION	BYSTANDER HIT BY ATV
394	860430	3 WHEELS	BYSTANDER	04	F	FAIRBANKS		AK	COLLISION	HIT BY ATV WHILE SLEDING
395	860427	4 WHEELS	DRIVER	08	M	MUNDY TOWNSHIP		MI	COLLISION	HIT ANOTHER ATV/THROWN
396	860427	3 WHEELS	DRIVER	14	M		CHATHAM	NC	COLLISION	HIT BY TRAIN
397	860427	4 WHEELS	DRIVER	06	M	TYNGSBOROUGH		MA	OVERTURNED	THROWN/LANDED ON VICTIM
398	860427	3 WHEELS	PASSENGER	12	M		CHATHAM	NC	COLLISION	HIT BY TRAIN
399	860426	3 WHEELS	DRIVER	31	M	LAFAYETTE	WHITE	IN	COLLISION	HIT OTHER ATV/LANDED ON VICTIM
400	860426	3 WHEELS	DRIVER	18	M	FAYETTEVILLE	CUMBERLAND	NC	COLLISION	WITH CAR
401	860424	4 WHEELS	DRIVER	09	M	DUBOIS	CLEARFIELD	PA	COLLISION	HIT CABLE/THROWN/CHIN HIT ATV
402	860421	3 WHEELS	DRIVER	81	M	PROCTOR	LAKE	MT	THROWN	LANDED ON VICTIM
403	860419	3 WHEELS	DRIVER	19	M	JOHNSTON		RI	OVERTURNED	LANDED ON VICTIM
404	860417	3 WHEELS	DRIVER	26	M	OKLAHOMA CITY		OK	UNKNOWN	
405	860414	4 WHEELS	PASSENGER	04	M	KEENE	MCKENZIE	ND	OVERTURNED	LANDED ON VICTIM
406	860406	3 WHEELS	DRIVER	29	M		CRAWFORD	MO	TERRAIN CHG	IN DITCH/LANDED ON VICTIM

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
407	860406	3 WHEELS	DRIVER	29	M	JEFFERSON	JACKSON	GA	OVERTURNED	VICTIM HIT TREE
408	860405	3 WHEELS	DRIVER	12	M	EVERETT		WA	TERRAIN CHG	70 FT EMBANKMENT/THROWN
409	860405	3 WHEELS	DRIVER	29	M	FALLON	CHURCHILL	NV	OVERTURNED	LANDED ON VICTIM
410	860404	3 WHEELS	DRIVER	17	M	SEATTLE		WA	COLLISION	HIT TRUCK/THROWN
411	860404	3 WHEELS	DRIVER	33	M	BAKERSFIELD	KERN	CA	OVERTURNED	LANDED ON VICTIM
412	860401	3 WHEELS	DRIVER	11	M	MANCHESTER	COFFEE	TN	OVERTURNED	THROWN
413	860331	4 WHEELS	DRIVER	22	M	SALT LAKE CITY		UT	OVERTURNED	THROWN/LANDED ON VICTIM
414	860331	3 WHEELS	DRIVER	14	M	RUTLAND		VT	COLLISION	HIT TREE/THROWN
415	860331	3 WHEELS	DRIVER	33	F	KODIAK		AK	TERRAIN CHG	EMBANKMENT/THROWN
416	860331	4 WHEELS	DRIVER	06	M	MADISON	MONROE	WI	THROWN	STRUCK RUT
417	860331	4 WHEELS	PASSENGER	09	F	MEADVILLE	ADAMS	MS	OVERTURNED	LANDED ON VICTIM
418	860330	3 WHEELS	DRIVER	27	M	CHURUBUSCO	CLINTON	NY	OVERTURNED	THROWN OFF/HIT TREE
419	860330	3 WHEELS	DRIVER	08	M	WEST POINT	CUMING	NE	COLLISION	HIT FENCE/OVERTURNED ON VICTIM
420	860330	3 WHEELS	DRIVER	28	M	OCOTILLO WELLS	SAN DIEGO	CA	COLLISION	HIT ANOTHER ATV
421	860330	3 WHEELS	DRIVER	36	M	ALVADA	HANCOCK	OH	COLLISION	HIT POLE/THROWN
422	860329	4 WHEELS	DRIVER	06	M	IOWA CITY		IA	COLLISION	HIT BY CAR
423	860329	3 WHEELS	DRIVER	15	M	SEARCY		AR	COLLISION	HIT TREE
424	860329	3 WHEELS	DRIVER	21	M	ALLEN		OH	OVERTURNED	LANDED ON VICTIM
425	860328	4 WHEELS	PASSENGER	15	M	ELKO		NV	COLLISION	WITH ATV
426	860327	3 WHEELS	DRIVER	19	M		ALBEMARLE	VA	COLLISION	HIT TREE
427	860325	3 WHEELS	DRIVER	09	M	JACKSON		MS	OVERTURNED	LANDED ON VICTIM
428	860323	4 WHEELS	DRIVER	05	M	CULLEOKA	DAVIDSON	TN	THROWN	HIT MUFFLER
429	860320	4 WHEELS	PASSENGER	20	F	LEWISTON		NY	COLLISION	HIT MAILBOX/THROWN
430	860317	3 WHEELS	DRIVER	14	M	MUSKEGO		WI	COLLISION	HIT PLANTED TIRE/OVERTURNED
431	860316	3 WHEELS	DRIVER	28	F	NORFOLK		VA	OVERTURNED	LANDED ON VICTIM
432	860315	3 WHEELS	DRIVER	17	M	CROCKETT	HOUSTON	TX	COLLISION	HIT TRUCK

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
433	860315	3 WHEELS	PASSENGER	11	F	MIDDLETOWN		NY	OVERTURNED	FELL INTO CREEK
434	860314	3 WHEELS	UNKNOWN	04	F	FAIRBANKS		AK	COLLISION	HIT BY ATV
435	860312	3 WHEELS	DRIVER	20	M	TOMAHAWK	LINCOLN	WI	OVERTURNED	
436	860311	3 WHEELS	BYSTANDER	03	M	LAS VEGAS	CLARK	NV	COLLISION	HIT BY ATV
437	860309	3 WHEELS	DRIVER	20	M	LEON	DECATUR	IA	COLLISION	HIT TRUCK/THROWN
438	860307	3 WHEELS	DRIVER	67	M	ERIE	NEOSHO	KS	OVERTURNED	LANDED ON VICTIM
439	860307	3 WHEELS	DRIVER	16	M	TAMPA		FL	OVERTURNED	THROWN/LANDED ON VICTIM
440	860223	4 WHEELS	DRIVER	07	M	RENO	WASHOE	NV	OVERTURNED	LANDED ON VICTIM
441	860222	4 WHEELS	DRIVER	12	M	SAN MATEO		CA	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
442	860221	3 WHEELS	DRIVER	24	M	GLAMIS	IMPERIAL	CA	COLLISION	HIT EMBANKMENT/OVERTURN/THROWN
443	860210	3 WHEELS	PASSENGER	08	F	APPLE VALLEY	SAN BERNARDINO	CA	COLLISION	HIT POWER POLE/THROWN
444	860210	4 WHEELS	DRIVER	11	M	NASHVILLE		TN	OVERTURNED	LANDED ON VICTIM
445	860204	3 WHEELS	DRIVER	23	M	JEANERETTE	ST MARY	LA	COLLISION	HIT TREE
446	860203	3 WHEELS	DRIVER	18	F	PLASTER CITY	SAN DIEGO	CA	COLLISION	HIT BY MOTORCYCLE/THROWN
447	860201	4 WHEELS	PS/OTH VEH	10	F	NEWTON	NEWTON	MS	COLLISION	RIDING ON GO-CART/HIT BY ATV
448	860201	4 WHEELS	DR/OTH VEH	12	M	NEWTON	NEWTON	MS	COLLISION	RIDING ON GO-CART/HIT BY ATV
449	860130	3 WHEELS	DRIVER	12	M	TYRE	SENECA	NY	COLLISION	HIT SNOW BANK/THROWN
450	860126	3 WHEELS	DRIVER	22	M	ANCHORAGE		AK	COLLISION	HIT CRAB POTS/THROWN
451	860125	3 WHEELS	DRIVER	15	M	CROSSNORE	AVERY	NC	TERRAIN CHG	OVER EMBANKMENT/HIT TREE
452	860125	3 WHEELS	DRIVER	07	M	COMANCHE	COMANCHE	TX	OVERTURNED	LANDED ON VICTIM
453	860125	3 WHEELS	DRIVER	25	M	GLAMIS	IMPERIAL	CA	OVERTURNED	LANDED ON VICTIM
454	860125	3 WHEELS	DRIVER	16	M	MERRYVILLE		LA	COLLISION	HIT TREE
455	860124	3 WHEELS	DRIVER	14	[illegible]	UNION	KNOX	ME	OVERTURNED	LANDED ON VICTIM
456	860119	3 WHEELS	DRIVER	14	M	NAHUNTA	BRANTLEY	GA	COLLISION	HIT CULVERT/AIRBORNE/HIT TREE
457	860119	3 WHEELS	PASSENGER	03	M	BORGER	HUTCHINSON	TX	OVERTURNED	LANDED ON VICTIM
458	860118	4 WHEELS	DRIVER	33	M	PERU	CLIN	NY	COLLISION	HIT OTHER ATV/THROWN

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                              DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL TERRAIN VEHICLES                                      19
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OBS   FDATEDTH   FTYPEVEH   FVICTIM     FAGE  FSEX    FCITY        FCOUNTY      FSTATE     FHP          FSUM

459    860115    4 WHEELS   DRIVER       14    M    LAKE WORTH   PALM BEACH      FL     OVERTURNED   THROWN/LANDED ON VICTIM
460    860114    4 WHEELS   DRIVER       22    M    SIDNEY TWP                   MI     COLLISION    HIT OTHER ATV/THROWN
461    860112    3 WHEELS   DRIVER       25    M                 WARREN          MO     COLLISION    HIT TRUCK
462    860108    4 WHEELS   DRIVER       26    M    HARMAN       MONONGALIA      WV     COLLISION    HIT EMBANKMENT/LANDED ON HIM
463    860104    4 WHEELS   PASSENGER    12    M    SAXTON                       PA     COLLISION    HIT CABLE BARRICADE
464    860104    3 WHEELS   UNKNOWN      00    M    GROVES                       TX     UNKNOWN
465    860101    3 WHEELS   DRIVER       27    M    POTSDAM      ST. LAWRENCE    NY     OVERTURNED   THROWN
466    860101    3 WHEELS   DRIVER       28    M    NEEDMORE     LAWRENCE        IN     TIPPED       FELL OFF ATV

N=     294
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
467	851222	4 WHEELS	DRIVER	24	M	ROCK RUN	WIRT	WV	OVERTURNED	
468	851221	3 WHEELS	DRIVER	27	M	[illegible] FLATS		AL	OTH OPER	CARRYING GUN/ACCIDENTLY SHOT
469	851218	4 WHEELS	DRIVER	25	M		NAPASKIAK	AK	OVERTURNED	LANDED ON VICTIM
470	851216	4 WHEELS	DRIVER	61	M	GRAHAM	YOUNG	TX	OVERTURNED	LANDED ON VICTIM
471	851208	4 WHEELS	DRIVER	16	M	HAMILTON	MARION	AL	COLLISION	NECK HIT CABLE
472	851207	3 WHEELS	DRIVER	33	M	DUDLEY	HUNTINGDON	PA	OVERTURNED	LANDED ON VICTIM
473	851207	3 WHEELS	DRIVER	22	M		WEBSTER	MO	COLLISION	HIT BY TRUCK
474	851207	3 WHEELS	DR/OTH VEH	19	M	TITUSVILLE		FL	COLLISION	HIT DIRT BIKE
475	851207	3 WHEELS	DRIVER	22	M	CANTON	STARK	OH	THROWN	JUMPING 3-6 FOOT MOUND
476	851206	3 WHEELS	DRIVER	24	M	HILTON	MONROE	NY	TERRAIN CHG	BRIDGE OUT/FELL 20 FT
477	851129	3 WHEELS	DRIVER	24	M	RATON	COLFAX	NM	OVERTURNED	THROWN/LANDED ON VICTIM
478	851124	3 WHEELS	DRIVER	14	M	KEYSVILLE	LUNENBURG	VA	COLLISION	HIT BY TRUCK
479	851124	4 WHEELS	DRIVER	16	M	KENAI		AK	COLLISION	HIT BY CAR/OVERTURNED
480	851124	3 WHEELS	DRIVER	13	F	NORTH FT MYERS	LEE	FL	COLLISION	HIT ANOTHER ATV
481	851116	3 WHEELS	DRIVER	13	M	LYONS	TOOMBS	GA	OVERTURNED	THROWN
482	851115	3 WHEELS	DRIVER	35	M	SOUTHAVEN	SHELBY	TN	TERRAIN CHG	INTO GULLY/LANDED ON VICTIM
483	851110	3 WHEELS	DRIVER	17	M	WALPOLE		MA	COLLISION	HIT CHAIN/THROWN
484	851109	3 WHEELS	DRIVER	43	M	ARMAGH	CAMBRIA	PA	COLLISION	HIT TRUCK
485	851104	3 WHEELS	DRIVER	13	M	ALTAMONT	DUCHESNE	UT	COLLISION	HIT CAR/THROWN
486	851103	3 WHEELS	UNKNOWN	16	M	BROOKLYN		NY	COLLISION	HIT CAR/THROWN
487	851031	3 WHEELS	DRIVER	25	M	GLEN COVE		NY	OVERTURNED	
488	851030	3 WHEELS	DRIVER	33	M	BURLINGTON		VT	OVERTURNED	THROWN
489	851026	4 WHEELS	DRIVER	26	M	JAMESTOWN	CHAUTAUQUA	NY	COLLISION	HIT CABLE ACROSS ROADWAY
490	851026	4 WHEELS	DRIVER	13	M	BAD AXE	HURON	MI	OVERTURNED	LANDED ON VICTIM
491	851025	3 WHEELS	DRIVER	22	M	CLARENDON	RUTLAND	VT	TERRAIN CHG	EMBANKMENT/THROWN
492	851025	3 WHEELS	DRIVER	17	M	STONINGTON	PENOBSCOT	ME	OVERTURNED	LANDED ON VICTIM

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSOM
493	851020	3 WHEELS	DRIVER	21	M	HANOVER	GRAFTON	NH	COLLISION	HIT TREE
494	851020	4 WHEELS	DRIVER	23	M	HARTFORD	[illegible]	KY	ATV CONTACT	BRAKE LEVER PUNCTURED THIGH
495	851020	3 WHEELS	DRIVER	31	M	HESPERIA	SAN BERNARDINO	CA	COLLISION	HIT BANK/AIRBORNE/OVERTURNED
496	851019	3 WHEELS	DRIVER	14	M	ERSKINE	GRAND FORKS	ND	OVERTURNED	THROWN
497	851019	3 WHEELS	DRIVER	12	M	PATOKA	GIBSON	IN	COLLISION	HIT JEEP/THROWN
498	851016	3 WHEELS	DRIVER	20	M	NATURAL BRIDGE		NY	COLLISION	HIT TRAIN
499	851013	3 WHEELS	DRIVER	18	M	BROKEN ARROW		OK	COLLISION	HIT PARKED CAR
500	851012	3 WHEELS	PASSENGER	28	M	BARROW		AK	COLLISION	HIT TRUCK
501	851012	3 WHEELS	DRIVER	18	M	BARROW		AK	COLLISION	HIT TRUCK
502	851011	3 WHEELS	DRIVER	19	M	UPHAM	LANGLADE	WI	COLLISION	HIT TREE
503	851006	3 WHEELS	DRIVER	33	M	PAUL SMITHS	FRANKLIN	NY	OVERTURNED	
504	851004	3 WHEELS	DRIVER	24	M	BORREGO SPRINGS	SAN DIEGO	CA	OVERTURNED	STRUCK DEPRESSION/THROWN
505	851002	3 WHEELS	DRIVER	10	M	ROANOKE RAPIDS	HALIFAX	NC	OVERTURNED	THROWN/LANDED ON VICTIM
506	850929	3 WHEELS	DRIVER	23	M	PHOENIX	MARICOPA	AZ	COLLISION	HIT TREE
507	850928	3 WHEELS	PASSENGER	09	F	DIETRICH		ID	OVERTURNED	THROWN
508	850928	3 WHEELS	DRIVER	23	M	SANTA ROSA	SONOMA	CA	COLLISION	HIT TRUCK
509	850928	3 WHEELS	PASSENGER	04	F	MEPPEN	CALHOUN	IL	OVERTURNED	LANDED ON VICTIM
510	850926	3 WHEELS	DRIVER	30	M	CASSADAGA	CHAUTAUQUA	NY	OVERTURNED	LANDED ON VICTIM
511	850923	3 WHEELS	DRIVER	18	M	PINEGROVE	MONTOUR	PA	COLLISION	HIT POST/AIRBORNE/THROWN
512	850922	3 WHEELS	DRIVER	21	M	MT VERNON		OH	COLLISION	HIT TREE/THROWN
513	850922	3 WHEELS	DRIVER	23	M	KIMBALL	MARION	TN	TERRAIN CHG	EMBANKMENT
514	850922	3 WHEELS	DRIVER	04	M	BEE SPRING	EDMONSON	KY	COLLISION	HIT BY CAR
515	850922	3 WHEELS	DRIVER	20	M	HANCOCK	DELA	NY	COLLISION	HIT TREE/OVER EMBANKMENT
516	850922	3 WHEELS/	DRIVER	08	M	LOMA LINDA	SAN BERNARDINO	CA	OVERTURNED	LANDED ON VICTIM
517	850921	4 WHEELS	DRIVER	15	F	FAYETTVILLE TWP	ST. CLAIR	IL	THROWN	
518	850919	3 WHEELS	PASSENGER	10	M	SHAKTOOLIK		AK	OVERTURNED	THROWN

YEAR=85

OBS	EDATEDTH	ETYPEVEH	EVICTIM	EAGE	ESEX	ECITY	ECOUNTY	ESTATE	EHP	ESUM
519	850914	4 WHEELS	DRIVER	25	F	GRAND FORKS	GRAND FORKS	ND	COLLISION	VICTIM AND ATV HIT TREE
520	850913	3 WHEELS	DRIVER	14	M	EVANSVILLE		IN	OVERTURNED	LANDED ON VICTIM
521	850910	3 WHEELS	DRIVER	21	M	UPLAND	SAN BERNARDINO	CA	THROWN	STRUCK BERM
522	850908	3 WHEELS	DRIVER	21	M	SPRING MILLS	CENTRE	PA	COLLISION	HIT TREE
523	850908	3 WHEELS	DRIVER	35	M	CHARLOTTESVILLE	ALBEMARLE	VA	OVERTURNED	LANDED ON VICTIM
524	850908	3 WHEELS	PASSENGER	04	M	OLIVE HILL	HARDIN	TN	COLLISION	HIT PICKUP TRUCK
525	850907	3 WHEELS	PASSENGER	10	M	CLINTONVILLE		NY	COLLISION	HIT TRUCK
526	850907	3 WHEELS	DRIVER	14	M	WOOD HEIGHTS	RAY	MO	OVERTURNED	STRUCK DIRT MOUND
527	850907	3 WHEELS	DRIVER	46	M	LYONS		MI	COLLISION	HIT GUARD RAIL/TREES
528	850907	3 WHEELS	DRIVER	31	M	CORINTH	SARATOGA	NY	COLLISION	HIT TREE/THROWN
529	850906	3 WHEELS	DRIVER	20	M	TRAVERSE CITY	GRAND TRAVERSE	MI	THROWN	
530	850906	3 WHEELS	DRIVER	18	M	MIAMI	DADE	FL	OVERTURNED	LANDED ON VICTIM
531	850904	3 WHEELS	DRIVER	14	M	COOKEVILLE	PUTMAN	TN	COLLISION	HIT BUS
532	850902	4 WHEELS	DRIVER	14	F	RYL PALM BEACH	PALM BEACH	FL	COLLISION	HIT BY CAR/THROWN
533	850902	4 WHEELS	DRIVER	45	F	RED RIVER		NM	THROWN	VICTIM HIT TREE
534	850901	3 WHEELS	DRIVER	11	M	PROMONTORY PT	BOX ELDER	UT	OTH OPER	FELL INTO MINE SHAFT
535	850831	3 WHEELS	DRIVER	12	M	UNITAH	SUMMIT	UT	TERRAIN CHG	CLIFF/HIT TREE
536	850831	4 WHEELS	DRIVER	67	M	DILLE	NICHOLAS	WV	COLLISION	HIT TREE/LANDED ON VICTIM
537	850831	4 WHEELS	PASSENGER	14	M	CLINTON		PA	THROWN	
538	850831	3 WHEELS	DRIVER	29	M	HAMPTON	CALHOUN	AR	OVERTURNED	LANDED ON VICTIM
539	850831	3 WHEELS	DRIVER	39	M	PISMO BEACH	SAN LUIS OBISPO	CA	OVERTURNED	THROWN/HEAD STRUCK OTHER ATV
540	850827	3 WHEELS	DRIVER	14	F	BERNALILLO	SANDOVAL	NM	COLLISION	HIT WATER GATE/THROWN
541	850827	3 WHEELS	DRIVER	84	M	CRESENT	POTTAWATTAMIE	IA	OVERTURNED	LANDED ON VICTIM
542	850826	4 WHEELS?	DRIVER	13	M	ST. IGNACE	MACKINAC	MI	COLLISION	HIT BY CAR
543	850825	3 WHEELS	DRIVER	23	M	ELDORADO	UNION	AR	COLLISION	HIT BY TRUCK/THROWN
544	850825	3 WHEELS	DRIVER	62	M	DYER	CRAWFORD	AR	OVERTURNED	RAN INTO LOOSE GRAVEL ON ROAD

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OBS	EDATEDTH	ETYPEVEH	EVICTIM	EAGE	ESEX	ECITY	ECOUNTY	ESTATE	EHP	ESUM
545	850825	3 WHEELS	DRIVER	58	M	LOMA LINDA	SAN BERNARDINO	CA	OVERTURNED	THROWN
546	850824	3 WHEELS	DRIVER	14	M	STOCKBRIDGE TWP		MI	COLLISION	HIT TREE
547	850823	3 WHEELS	DRIVER	13	M	RICHFIELD		UT	OVERTURNED	LANDED ON VICTIM
548	850820	4 WHEELS	DRIVER	15	M	KINGSTON	ROCKINGHAM	NH	COLLISION	HIT DIRT BIKE
549	850818	3 WHEELS	DRIVER	14	F	LONSDALE	RICE	MN	COLLISION	HIT TRACTOR/THROWN
550	850817	3 WHEELS	DRIVER	66	M	HOULTON	AROOSTOOK	ME	OVERTURNED	LANDED ON VICTIM
551	850816	3 WHEELS	DRIVER	14	M	ALBUQUERQUE		NM	COLLISION	HIT BY CAR/THROWN
552	850816	3 WHEELS	PASSENGER	14	M	ALBUQUERQUE		NM	COLLISION	HIT BY CAR/THROWN
553	850815	3 WHEELS	DRIVER	14	M	BURNSVILLE		MS	COLLISION	HIT TREE
554	850815	3 WHEELS	PASSENGER	17	M	BREWTON		AL	COLLISION	HIT ANOTHER ATV/THROWN
555	850811	3 WHEELS	DRIVER	22	M	OTIS		MA	OVERTURNED	THROWN
556	850810	UNKNOWN	UNKNOWN	12	M	BREWSTER	OKANOGAN	WA	UNKNOWN	
557	850809	3 WHEELS	DRIVER	13	M	LUDLOW		MA	COLLISION	HIT BY CAR
558	850808	3 WHEELS	DRIVER	18	M	INYOKERN	KERN	CA	THROWN	STRUCK DIP
559	850806	3 WHEELS	DRIVER	13	M	FORT MEYERS	LEE	FL	TIPPED	FELL OFF
560	850804	3 WHEELS	PASSENGER	05	M	DEWITT	[illegible]	NE	OVERTURNED	THROWN
561	850804	3 WHEELS	DRIVER	13	M	INTERLACHEN	PUTNAM	FL	OVERTURNED	LANDED ON VICTIM
562	850803	4 WHEELS	DRIVER	59	M	HAMLIN TWP		PA	THROWN	
563	850803	3 WHEELS	PASSENGER	06	M	TABIONA	DUCHESNE	UT	OVERTURNED	LANDED ON VICTIM
564	850803	3 WHEELS	BYSTANDER	02	F	MT VILLAGE		AK	COLLISION	HIT BY ATV
565	850801	4 WHEELS	DRIVER	17	M	ROXBORO	PERSON	NC	COLLISION	HIT TREE/OVERTURNED
566	850801	3 WHEELS	DRIVER	25	M	VAIL	EAGLE	CO	COLLISION	HIT TREE
567	850731	3 WHEELS	PASSENGER	27	M	MIAMI	DADE	FL	FELL	HEAD HIT GROUND
568	850730	3 WHEELS	DRIVER	16	M	[illegible]	CLEARFIELD	PA	COLLISION	HIT BY CAR
569	850728	4 WHEELS	DRIVER	23	M	AUSTIN		TX	COLLISION	HIT PIPE/THROWN
570	850728	3 WHEELS	DRIVER	16	M	ALBANY	VINTON	OH	THROWN	STRUCK DITCH

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OBS	IDATEDTH	ITYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
571	850728	3 WHEELS	DRIVER	44	M	PALM SPRINGS	RIVERSIDE	CA	COLLISION	HIT DUNE BUGGY/THROWN
572	850727	3 WHEELS	DRIVER	10	M	KINGSLAND	PULASKI	AR	THROWN	
573	850727	3 WHEELS	DRIVER	13	M	TROUT RUN	LYCOMING	PA	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
574	850727	3 WHEELS	DRIVER	63	M	PORTER	OXFORD	ME	COLLISION	HIT TREES
575	850727	4 WHEELS	DRIVER	12	M	BULL RUN	PRESTON	WV	COLLISION	HIT FENCE/THROWN
576	850726	3 WHEELS	PASSENGER	15	M	WHITESIDE	JORDAN	IL	COLLISION	HIT BY CAR
577	850726	3 WHEELS	DRIVER	13	M	WHITESIDE	JORDAN	IL	COLLISION	HIT BY CAR
578	850726	3 WHEELS	DRIVER	21	M	GORHAM	COOS	NH	COLLISION	HIT GUARD RAIL CABLE
579	850725	3 WHEELS	DRIVER	18	M	WEST MEMPHIS	CRITTENDEN	AR	OVERTURNED	LANDED ON VICTIM
580	850724	3 WHEELS	DRIVER	09	F	KINGMAN	KINGMAN	KS	OVERTURNED	LANDED ON VICTIM
581	850723	3 WHEELS	DRIVER	15	M	WELLS TWP		MI	COLLISION	HIT TRUCK
582	850722	3 WHEELS	DRIVER	15	M	PITTSBURGH	ALLEGHENY	PA	COLLISION	HIT CHAIN/THROWN
583	850722	3 WHEELS	DRIVER	22	M	SAN YSIDRO		CA	COLLISION	WITH ANOTHER ATV/THROWN
584	850721	3 WHEELS	DRIVER	18	M	SEARSPORT	WALDO	ME	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
585	850720	3 WHEELS	DRIVER	62	M	RED ST. ANTHONY	FREMONT	ID	TERRAIN CHG	CLIFF/LANDED ON VICTIM
586	850719	3 WHEELS	DRIVER	17	M	NIANGUA		MO	THROWN	
587	850715	4 WHEELS	DRIVER	13	M	DELTONA	VOLUSIA	FL	OVERTURNED	LANDED ON VICTIM
588	850714	3 WHEELS	PASSENGER	19	F	VINCENNES	KNOX	IN	OVERTURNED	LANDED ON VICTIM
589	850713	3 WHEELS	DRIVER	14	M	SHINGLEHOUSE	MCKEAN	PA	COLLISION	HIT TRUCK
590	850713	3 WHEELS	DRIVER	13	M	WHITE RIVER	ASHLAND	WI	COLLISION	HIT FENCE POST/FLIPPED
591	850712	3 WHEELS	DRIVER	09	M	WHEATFIELD	JASPER	IN	COLLISION	HIT BY TRUCK
592	850711	4 WHEELS	DRIVER	25	M	LAKE WYNONA	SALINE	AR	COLLISION	HIT TREE
593	850711	3 WHEELS	DRIVER	13	M	BULVERDE	COMAL	TX	OVERTURNED	THROWN/LANDED ON VICTIM
594	850708	4 WHEELS	DRIVER	18	F	ANTON	HOPKINS	KY	COLLISION	HIT TRAIN
595	850708	3 WHEELS	DRIVER	22	M	RICHMOND	CHESTERFIELD	VA	OVERTURNED	LANDED ON VICTIM
596	850707	3 WHEELS	DRIVER	13	M	BLOOMSBURG		PA	COLLISION	HIT TREE/THROWN

YEAR=85

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
597	850706	3 WHEELS	DRIVER	22	M	BULLHEAD	MOHAVE	AZ	COLLISION	HIT TELEPHONE POLE
598	850705	3 WHEELS	DRIVER	17	M	BARAGA		MI	COLLISION	HIT TREE
599	850705	4 WHEELS	DRIVER	06	M	CRYSTAL LAKE	MC HENRY	IL	THROWN	STRUCK RUT
600	850704	3 WHEELS	DRIVER	16	F	GOODLAND	SHERMAN	KS	COLLISION	HIT BY CAR
601	850703	3 WHEELS	DRIVER	21	M	CAMPBELL TWP		MI	COLLISION	HIT TRUCK
602	850703	3 WHEELS	DRIVER	14	M	OREGON CITY	CLACKAMAS	OR	COLLISION	HIT BY CAR
603	850703	3 WHEELS	DRIVER	26	F	MANTUA	BOX ELDER	UT	OVERTURNED	LANDED ON VICTIM
604	850700	UNKNOWN	DRIVER	13	M	CHATEAUGAY		NY	COLLISION	HIT WIRE STRUNG ACROSS PATH
605	850629	3 WHEELS	DRIVER	25	M	HILLSBORO		NH	COLLISION	HIT TREE
606	850627	3 WHEELS	DRIVER	18	F	GLENDO	PLATTE	WY	OVERTURNED	LANDED ON VICTIM
607	850626	3 WHEELS	DRIVER	15	F	WILMOT TWP	BRADFORD	PA	COLLISION	HIT TREES
608	850625	3 WHEELS	UNKNOWN	11	M	BURLESON		TX	UNKNOWN	
609	850624	3 WHEELS	DRIVER	12	M	WESTON		ID	COLLISION	HIT TRAIN/THROWN
610	850623	3 WHEELS	DRIVER	27	F	CINCINNATI		OH	THROWN	STRUCK CURB
611	850623	4 WHEELS	BYSTANDER	39	M	PERSHING	MARION	IA	COLLISION	BYSTANDER HIT BY ATV
612	850623	3 WHEELS	DRIVER	15	M	VERSAILLES	MORGAN	MO	COLLISION	HIT TRUCK
613	850623	3 WHEELS	PASSENGER	15	M	COLBY	MARATHON	WI	COLLISION	HIT BY CAR
614	850620	3 WHEELS	PASSENGER	12	M	CARTHAGE		NC	COLLISION	HIT BY CAR
615	850619	3 WHEELS	DRIVER	14	M	LAFAYETTE		PA	COLLISION	HIT BY CAR/THROWN
616	850619	4 WHEELS	DRIVER	38	M	CASCADE		MT	OVERTURNED	LANDED ON VICTIM
617	850617	3 WHEELS	DRIVER	16	M	NEWPORT		KY	OVERTURNED	LANDED ON VICTIM
618	850616	3 WHEELS	DRIVER	22	F	HOMESTEAD	DADE	FL	COLLISION	HIT ATV/STOP SIGN/THROWN
619	850615	3 WHEELS	DRIVER	04	M	VINA		CA	OVERTURNED	
620	850608	3 WHEELS	DRIVER	13	M	PHOENIX	MARICOPA	AZ	COLLISION	HIT BY CAR
621	850608	3 WHEELS	DRIVER	47	M	OMAHA		NE	OVERTURNED	LANDED ON VICTIM
622	850607	4 WHEELS	DRIVER	12	M	ROSEVILLE		IL	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
623	850605	3 WHEELS	DRIVER	33	M	ST THOMAS	FRANKLIN	PA	COLLISION	HIT TREE
624	850602	3 WHEELS	DRIVER	39	M	CAMBRIDGE TWP	CRAWFORD	PA	COLLISION	HIT EMBANKMENT/THROWN
625	850601	3 WHEELS	DRIVER	19	M	HAMBURG	ASHLEY	AR	COLLISION	HIT TREE
626	850601	4 WHEELS	DRIVER	07	F	HETTINGER	ADAMS	ND	COLLISION	HIT GASOLINE TANK/THROWN
627	850528	4 WHEELS	PASSENGER	05	M	COUNCIL BLUFFS		IA	OVERTURNED	LANDED ON VICTIM
628	850527	3 WHEELS	DRIVER	20	M	KNOX	COLUMBIANA	OH	COLLISION	HIT POLE/THROWN
629	850527	3 WHEELS	UNKNOWN	09	M	MULKEYTOWN		IL	UNKNOWN	
630	850526	4 WHEELS	DRIVER	26	M	SUMMIT	SAN BERNADINO	CA	COLLISION	HIT RAILROAD ABUTMENT
631	850526	3 WHEELS	PASSENGER	06	F	MOSCOW	SOMERSET	ME	OVERTURNED	LANDED ON VICTIM
632	850526	3 WHEELS	DRIVER	06	M	DUNSEITH		ND	OVERTURNED	LANDED ON VICTIM
633	850524	3 WHEELS	DRIVER	17	M	GREEN LANE		PA	COLLISION	HIT TREE
634	850524	3 WHEELS	DRIVER	26	M	NORTHPORT		FL	THROWN	HEAD STRUCK SAND BANK
635	850524	3 WHEELS	DRIVER	28	M	TIMBERLINE	BURKE	WV	FELL	
636	850521	3 WHEELS	DRIVER	16	F	VISALIA	TULARE	CA	OVERTURNED	LANDED ON VICTIM
637	850519	3 WHEELS	DRIVER	11	M	TURNERSVILLE	GLOUCESTER	NJ	OVERTURNED	LANDED ON VICTIM
638	850518	3 WHEELS	DRIVER	11	F	AULANDER	HERTFORD	NC	OVERTURNED	STRUCK HOLE
639	850518	3 WHEELS	DRIVER	15	M	DAVIDSON		TN	OVERTURNED	LANDED ON VICTIM
640	850518	4 WHEELS	DRIVER	24	M	HANNIBAL	OSWEGO	NY	COLLISION	HIT RAILROAD TIES/THROWN
641	850517	3 WHEELS	DRIVER	15	M	MONROE	OUACHITA PARISH	LA	OTH OPER	STRUCK WIRE ON GROUND
642	850512	3 WHEELS	DRIVER	11	M	WATER VALLEY	CALHOUN	MS	OVERTURNED	RIDING UP DAM
643	850511	3 WHEELS	PASSENGER	14	M	BLUE MOUNTAIN		MS	COLLISION	HIT BY CAR
644	850509	3 WHEELS	DRIVER	16	F	ALEXANDRIA	RAPIDES	LA	COLLISION	HIT TRACTOR
645	850508	3 WHEELS	DRIVER	11	M	CHURCH POINT	ST LANDRY PARS	LA	COLLISION	HIT BARBED WIRE STRAND
646	850506	3 WHEELS	DRIVER	12	M	MIMS		FL	COLLISION	HIT TREE/LANDED ON VICTIM
647	850505	3 WHEELS	PASSENGER	16	M	FLORIDA	DADE	FL	COLLISION	HIT BY TRUCK
648	850505	3 WHEELS	DRIVER	30	F	MESA		AZ	OVERTURNED	LANDED ON VICTIM

DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
649	850505	3 WHEELS	PASSENGER	30	F	ARKANSAS CITY	SEDGWICK	KS	OVERTURNED	THROWN
650	850504	3 WHEELS	DRIVER	15	M	PARAGOULD	GREENE	AR	THROWN	STRUCK HOLE
651	850504	3 WHEELS	DRIVER	16	M	TUCSON	PIMA	AZ	OVERTURNED	THROWN/LANDED ON VICTIM
652	850502	4 WHEELS	DRIVER	07	M	PHILADELPHIA		MS	OVERTURNED	LANDED ON VICTIM
653	850501	3 WHEELS	DRIVER	07	M	MORA	KANABEC	MN	COLLISION	HIT FENCE
654	850501	3 WHEELS	DRIVER	10	M	BIGGS	BUTTE	CA	TERRAIN CHG	WATER CANAL/LANDED ON VICTIM
655	850430	3 WHEELS	DRIVER	14	M	VALIANT	MCCURTAIN	OK	OVERTURNED	THROWN
656	850430	3 WHEELS	DRIVER	77	M	DRUMMOND		ID	UNKNOWN	
657	850428	3 WHEELS	DRIVER	47	M		SUMNER	KS	COLLISION	HIT TREE
658	850428	3 WHEELS	DRIVER	38	F		KERN	CA	COLLISION	HIT DUNE BUGGY/PINNED
659	850426	3 WHEELS	DRIVER	23	M	JENNINGS		LA	COLLISION	HIT BY TRUCK
660	850424	3 WHEELS	DRIVER	14	M	KALAMAZOO	KALAMAZOO	MI	COLLISION	HIT BY CAR
661	850424	3 WHEELS	PASSENGER	08	M	PRICE	CARBON	UT	OVERTURNED	LANDED ON VICTIM
662	850421	3 WHEELS	DRIVER	21	M	PATTEN		ME	AIRBORNE	THROWN
663	850421	3 WHEELS	DRIVER	03	M	EVERETT	SNOHOMISH	WA	OVERTURNED	THROWN/HIT TREE STUMP
664	850420	3 WHEELS	DRIVER	14	M	OPELOUSAS	ST LANDRY	LA	OVERTURNED	LANDED ON VICTIM
665	850420	3 WHEELS	DRIVER	09	M	BESSMER		LA	COLLISION	HIT PARKED TRUCK
666	850420	3 WHEELS	DRIVER	28	M	LAS CRUCES	DONA ANA	NM	OVERTURNED	
667	850418	3 WHEELS	DRIVER	54	M	SMITHVILLE	MCCURTAIN	OK	THROWN	STRUCK ROCKS
668	850414	3 WHEELS	DRIVER	14	M	WEST CALDWELL		NJ	OVERTURNED	
669	850413	3 WHEELS	DRIVER	27	M	CROSSETT	ASHLEY	AR	COLLISION	HIT TREE
670	850412	3 WHEELS	DRIVER	20	M	EUREKA TWP		MI	COLLISION	HIT BRIDGE
671	850412	3 WHEELS	DRIVER	53	M	DEWITT	ARKANSAS	AR	OVERTURNED	LANDED ON VICTIM
672	850408	3 WHEELS	DRIVER	15	M	MINERAL WELLS	WOOD	WV	COLLISION	HIT TREE
673	850407	4 WHEELS	PASSENGER	02	F	HOT SPRINGS		AR	OVERTURNED	INADVERTENT THROTTLE CONTACT
674	850406	3 WHEELS	DRIVER	16	M	MACEDON	WAYNE	NY	COLLISION	HIT BY TRAIN

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                    DEATHS ASSOCIATED WITH 3 AND 4-WHEELED ALL-TERRAIN VEHICLES                                   28
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OBS FDATEDTH FTYPEVEH FVICTIM     FAGE FSEX FCITY            FCOUNTY          FSTATE FHP          FSUM

675  850405  3 WHEELS DRIVER       22   M   MANY                                LA   COLLISION    HIT ATV/LANDED IN TRUCK
676  850405  4 WHEELS DRIVER       06   M   CHESTERFIELD     CHESTERFIELD       VA   COLLISION    HIT TRACTOR-TRAILER/AIRBORNE
677  850405  3 WHEELS DRIVER       14   F   PISMO BEACH      SAN LUIS OBISPO    CA   OVERTURNED   LANDED ON VICTIM
678  850403  4 WHEELS DRIVER       05   M   ELBERTON         ELBERT             GA   COLLISION    HIT BY TRUCK
679  850331  3 WHEELS DRIVER       05   M   BLOCKSBURG       HUMBOLDT           CA   TERRAIN CHG  INTO IRRIGATION POOL
680  850331  3 WHEELS DRIVER       22   M   MERRIMACK                           NH   OVERTURNED   LANDED ON VICTIM/JUMPING BANK
681  850325  3 WHEELS DRIVER       12   M   HIGH RIDGE       ST. LOUIS          MO   OVERTURNED   THROWN
682  850321  3 WHEELS DRIVER       36   M   RUSSELLVILLE                        AR   COLLISION    HIT TREE
683  850320  3 WHEELS DRIVER       53   M   WATERBURY                           CT   COLLISION    HIT WALL
684  850320  3 WHEELS PASSENGER    03   M   LOUISVILLE       BARBOUR            AL   OVERTURNED   HIT IN HEAD BY WHEEL
685  850319  3 WHEELS DRIVER       06   M   RAWLINGS         BRUNSWICK          VA   FELL         STRUCK BUMP
686  850315  3 WHEELS DRIVER       22   M   SMITHVILLE       CHENANGO           NY   COLLISION    HIT GUARD RAIL
687  850309  3 WHEELS DRIVER       20   M   BEALETON         FAUQUIER           VA   COLLISION    HIT TRUCK
688  850309  3 WHEELS DRIVER       16   F   FRYING PAN       DICKENSON          VA   COLLISION    HIT TREE
689  850309  3 WHEELS DRIVER       15   M   KANSAS CITY      JACKSON            MO   COLLISION    HIT BY TRAIN
690  850307  3 WHEELS DRIVER       13   M   TARPON SPRING                       FL   OVERTURNED   LANDED ON VICTIM
691  850301  3 WHEELS DRIVER       36   M   PESHTIGO         MARINETTE          WI   TERRAIN CHG  DROVE OFF ICE INTO WATER
692  850301  3 WHEELS PASSENGER    04   M   PESHTIGO         MARINETTE          WI   TERRAIN CHG  DROVE OFF ICE INTO WATER
693  850228  4 WHEELS DRIVER       13   M   FAYETTE                             AL   OVERTURNED
694  850226  3 WHEELS DRIVER       10   M   FORT ROCK        LAKE               OR   OVERTURNED   LANDED ON VICTIM
695  850225  3 WHEELS DRIVER       08   M   EASTON                              ND   OVERTURNED   LANDED ON VICTIM
696  850225  3 WHEELS DRIVER       03   M   SHERIDAN         GRANT              AR   OVERTURNED   STRUCK DITCH/LANDED ON VICTIM
697  850223  3 WHEELS DRIVER       17   M   STERLING HGTS                       MI   COLLISION    HIT CAR
698  850223  3 WHEELS PASSENGER    18   M   STERLING HGTS                       MI   COLLISION    HIT CAR
699  850221  3 WHEELS DRIVER       39   M   UPPER TURKEY FT  SOMMERSET          PA   COLLISION    HIT MOTORCYCLE
700  850218  3 WHEELS DRIVER       21   F   TEMPE            MARICOPA           AZ   COLLISION    HIT TRUCK/THROWN
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DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FOP	FSUM
701	850210	4 WHEELS	DR/OTH VEH	80	M	ERIE	GREENE	PA	COLLISION	WITH SNOWMOBILE
702	850208	4 WHEELS	DRIVER	06	M	LAWRENCE	VAN BUREN	MI	OVERTURNED	LANDED ON VICTIM
703	850206	3 WHEELS	DRIVER	13	M	OLD SALEM		TX	COLLISION	HIT TRUCK
704	850202	3 WHEELS	PASSENGER	09	M	NEW BRAINTREE	WORCESTER	MA	OTH OPER	ON SLED/ROPE BROKE/HIT TREE
705	850118	4 WHEELS	DRIVER	75	M			AL	OVERTURNED	THROWN
706	850113	3 WHEELS	DRIVER	23	M	WAPPINGERS FALL		NY	COLLISION	HIT STEEL CABLE
707	850105	3 WHEELS	PASSENGER	40	M	FT LAUDERDALE		FL	COLLISION	HIT BY LOADER
708	850105	3 WHEELS	DRIVER	15	M	MIAMI	DADE	FL	TERRAIN CHG	AIRBORN/CLIFF/LANDED ON VICTIM
709	850105	3 WHEELS	DRIVER	15	M	WILLIAMSPORT	LYCOMING	PA	COLLISION	HIT ANOTHER ATV/THROWN
710	850104	4 WHEELS	DRIVER	10	M	EUDORA	CHICOT	AR	TERRAIN CHG	OFF BRIDGE/17 FEET INTO WATER
711	850103	3 WHEELS	DRIVER	21	M	PALMER	PALMER	AK	COLLISION	HIT PIPE/THROWN
712	850102	3 WHEELS	DRIVER	[illegible]	M	UPPER FREEHOLD	MONMOUTH	NJ	TERRAIN CHG	ROAD ENDED-BRIDGE OUT
713	850101	3 WHEELS	PASSENGER	07	M	[illegible]		WI	COLLISION	HIT BY PICK-UP TRUCK

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
714	841227	3 WHEELS	DRIVER	12	F	GREENVILLE	WASHINGTON	MS	COLLISION	HIT TREE
715	841227	3 WHEELS	BYSTANDER	11	M	GARLAND		NE	COLLISION	HIT BY CAR/PUSHING STALLED ATV
716	841226	3 WHEELS	DRIVER	18	M	GREENFIELD	HANCOCK	IN	COLLISION	HIT FENCE/TREE
717	841225	3 WHEELS	PASSENGER	41	F	NAKNEK		AK	COLLISION	HIT BRIDGE/THROWN
718	841225	3 WHEELS	DRIVER	11	M	NAKNEK		AK	COLLISION	HIT BRIDGE/THROWN
719	841222	3 WHEELS	DRIVER	63	M	DECATURVILLE	DECATUR	TN	OVERTURNED	THROWN
720	841217	4 WHEELS	DRIVER	64	M	DEKALB	HINDS	MS	COLLISION	HIT DIRT BANK/THROWN
721	841216	3 WHEELS	DRIVER	13	M	W. WINDSOR TWP		NJ	OVERTURNED	LANDED ON VICTIM
722	841208	3 WHEELS	DRIVER	29	M		OCONTO	WI	COLLISION	HIT WIRE BARRICADE
723	841127	3 WHEELS	DRIVER	22	M	BOXFORD	ESSEX	MA	COLLISION	HIT TREE
724	841126	3 WHEELS	PASSENGER	33	M	SCHOFIELD	MARATHON	WI	COLLISION	HIT BRIDGE/THROWN
725	841126	3 WHEELS	DRIVER	13	F	FRANKLIN TWSP	CHESTER	PA	COLLISION	HIT BY TRUCK
726	841122	3 WHEELS	DRIVER	22	F	BARRON LANE	AVOYELLES	LA	COLLISION	HIT TRUCK
727	841119	3 WHEELS	DRIVER	21	M	DONIPHAN		MO	OVERTURNED	THROWN
728	841118	3 WHEELS	DRIVER	23	M	MELROSE	JEFFERSON	AL	OVERTURNED	LANDED ON VICTIM
729	841117	3 WHEELS	DRIVER	34	M	EL CENTRO		CA	OVERTURNED	LANDED ON VICTIM
730	841111	3 WHEELS	DRIVER	04	M	WILLS POINT	KAUFMAN	TX	COLLISION	HIT STOCK TANK/THROWN
731	841104	3 WHEELS	DRIVER	13	F	HEIDRICK	KNOX	KY	COLLISION	HIT TREES/LANDED ON VICTIM
732	841103	4 WHEELS	DRIVER	24	M	PACKWOOD	LEWIS	WA	TERRAIN CHG	DROVE INTO CREEK
733	841021	3 WHEELS	DRIVER	37	M	OPPENHEIM	FULTON	NY	THROWN	STRUCK ROCK/VICTIM HIT TREE
734	841021	3 WHEELS	PASSENGER	20	F	BOONES MILL	FRANKLIN	VA	COLLISION	HIT TRUCK/AIRBORNE/THROWN
735	841021	4 WHEELS	PASSENGER	29	M	HANOVER		NH	THROWN	STRUCK DRAINAGE DITCH
736	841013	4 WHEELS	DRIVER	60	F	MANY	SABINE PARISH	LA	OVERTURNED	THROWN
737	841013	3 WHEELS	DRIVER	25	M	FORT ANN	WASHINGTON	NY	COLLISION	HIT RR CROSSING SIGNAL/THROWN
738	841011	3 WHEELS	PASSENGER	11	M	STURGIS		MS	COLLISION	HIT TRUCK/THROWN
739	841009	3 WHEELS	DRIVER	43	M	CRANE TOWNSHIP	WYANDOT	OH	COLLISION	HIT TREE/THROWN

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
740	841007	3 WHEELS	PASSENGER	47	M	TUXEDO	DUCHESS	NY	COLLISION	HIT TREE
741	841006	3 WHEELS	DRIVER	11	M	STURGIS		MS	COLLISION	HIT TRUCK/THROWN
742	841002	3 WHEELS	DRIVER	71	M	BRAZEAU		WI	COLLISION	HIT ANOTHER ATV/THROWN
743	840929	3 WHEELS	PASSENGER	10	M	SELMER	MCNAIRY	TN	COLLISION	HIT CAR/THROWN
744	840926	3 WHEELS	DRIVER	24	F	ELMA	GRAYS HARBOR	WA	COLLISION	HIT TREE/THROWN
745	840924	3 WHEELS	DRIVER	17	M	NEW LONDON	OUTAGAMIE	WI	COLLISION	HIT TRUCK
746	840923	3 WHEELS	DRIVER	19	F	WELLINGTON		KS	COLLISION	HIT ANOTHER ATV
747	840915	3 WHEELS	UNKNOWN	22	M	WICHITA	SEDGWICK	KS	UNKNOWN	
748	840915	3 WHEELS	PASSENGER	18	F	HUNTSVILLE		AL	THROWN	LANDED ON VICTIM
749	840914	3 WHEELS	DRIVER	09	F	PORTLAND		MI	OVERTURNED	LANDED ON VICTIM
750	840912	3 WHEELS	PASSENGER	08	M		TILLAMOOK	OR	COLLISION	HIT CYCLE/ATV LANDED ON VICTIM
751	840911	3 WHEELS	DRIVER	53	M	ASHLAND CITY	CHEATHAM	TN	COLLISION	HIT CAR
752	840910	4 WHEELS	DRIVER	32	M	MORRILTON	CONWAY	AR	THROWN	STRUCK DITCH
753	840909	3 WHEELS	DRIVER	26	M	BESSEMER	JEFFERSON	AL	OVERTURNED	LANDED ON VICTIM
754	840907	3 WHEELS	DRIVER	12	M	BATON ROUGE	IBERVILLE	LA	COLLISION	HIT BY CAR
755	840906	3 WHEELS	DRIVER	12	M	RISING SUN	OHIO	IN	OVERTURNED	LANDED ON VICTIM
756	840905	3 WHEELS	DRIVER	12	M	MOSS	JASPER	MS	COLLISION	HIT BY TRUCK
757	840903	3 WHEELS	DRIVER	22	F	GOLDSBORO	PITT	NC	OVERTURNED	LANDED ON VICTIM
758	840901	3 WHEELS	DRIVER	08	M	BOLIVAR		NY	FELL	
759	840831	3 WHEELS	PASSENGER	15	M	BENTON		AR	COLLISION	HIT WIRE CABLE
760	840831	3 WHEELS	DRIVER	14	F	PITTSBORO	HENDRICKS	IN	COLLISION	HIT TREE/THROWN
761	840830	3 WHEELS	DRIVER	12	M	STANDISH		MI	COLLISION	HIT BY MOTORCYCLE
762	840828	4 WHEELS	DRIVER	26	M	SPRING CITY	BLEDSOE	TN	OVERTURNED	THROWN
763	840827	3 WHEELS	DRIVER	12	M	PUTNAM	PEORIA	IL	COLLISION	HIT TREE/ROLLED INTO RAVINE
764	840826	3 WHEELS	DRIVER	13	M	CAMDEN	OUACHITA	AR	TERRAIN CHG	LANDED IN CREEK BED
765	840825	3 WHEELS	DRIVER	10	F	WILLOW RIVER	MCHENRY	ND	THROWN	STRUCK HOLE

YEAR=84

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
766	840825	3 WHEELS	DRIVER	19	M	CAZENOVIA	MADI	NY	THROWN	VICTIM HIT TREE
767	840823	3 WHEELS	DRIVER	23	M	OAKVILLE		CA	OVERTURNED	LANDED ON VICTIM
768	840823	3 WHEELS	DRIVER	11	M	DEERFIELD TWP	LAPEER	MI	THROWN	
769	840821	3 WHEELS	DRIVER	13	F	LACONIA	SUFFOLK	NH	OVERTURNED	LANDED ON VICTIM
770	840818	3 WHEELS	DRIVER	39	M	MT PLEASANT		TX	OVERTURNED	LANDED ON VICTIM
771	840813	3 WHEELS	DRIVER	23	M	LEADWOOD	FARMINGTON	MO	OVERTURNED	LANDED ON VICTIM
772	840812	4 WHEELS	DRIVER	16	F	WINNSBORO	WOOD	TX	OVERTURNED	LANDED ON VICTIM
773	840811	3 WHEELS	DRIVER	24	M	SPENCER	WORCESTER	MA	COLLISION	HIT TREE
774	840807	3 WHEELS	DRIVER	12	M	WICHITA	SEDGWICK	KS	COLLISION	HIT TRAIN/THROWN
775	840806	3 WHEELS	DRIVER	23	M	NEW VINEYARD		ME	COLLISION	HIT UTILITY POLE
776	840804	3 WHEELS	DRIVER	14	M	NEW HARTFORD	BLACKHAWK	IA	COLLISION	HIT BY CAR
777	840729	3 WHEELS	DRIVER	24	M	BRANDON	RUTLAND	VT	OVERTURNED	THROWN
778	840727	3 WHEELS	DRIVER	21	M	DEVILS LAKE		ND	OVERTURNED	LANDED ON VICTIM
779	840727	3 WHEELS	DRIVER	07	F	UNITY	MARATHON	WI	TERRAIN CHG	AIRBORNE/LANDED ON VICTIM
780	840724	3 WHEELS	DRIVER	11	M	PROVIDENCE		AL	COLLISION	HIT CAR
781	840722	3 WHEELS	DRIVER	43	M	BRANDON	RENVILLE	MN	THROWN	STRUCK DRIVEWAY
782	840719	3 WHEELS	DRIVER	03	M	MARKIANNA		AR	OVERTURNED	THROWN
783	840716	3 WHEELS	DRIVER	07	M	WEST LINN	CLACKAMAS	OR	COLLISION	HIT BY CAR
784	840714	3 WHEELS	DRIVER	31	M	GORMAN	LOS ANGELES	CA	OVERTURNED	THROWN
785	840714	3 WHEELS	DRIVER	46	M	STEPHENSON	WASHINGTON	WI	COLLISION	HIT TREE
786	840710	3 WHEELS	DRIVER	07	M	NATCHITOCHES		LA	OVERTURNED	LANDED ON VICTIM
787	840706	3 WHEELS	PASSENGER	12	M	ADELL	SHEBOYGAN	WI	OTH OPER	TOWED TRAILER DISENGAGED
788	840705	3 WHEELS	DRIVER	42	M	CONWAY	FAULKNER	AR	COLLISION	HIT BY TRAIN/THROWN
789	840704	3 WHEELS	DRIVER	23	M	NEW CASTLE	WEST	NY	COLLISION	HIT UTILITY POLE
790	840703	3 WHEELS	DRIVER	11	M	EDEN LAKE TWP	STEARNS	MN	COLLISION	HIT TRUCK
791	840703	3 WHEELS	DRIVER	21	M	MANTUA	PORTAGE	OH	COLLISION	HIT TREE

YEAR=84

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
792	840701	3 WHEELS	PASSENGER	03	M	INDEPENDENCE		MI	OVERTURNED	LANDED ON VICTIM
793	840630	3 WHEELS	DRIVER	52	M	RIVERSIDE	WALKER	TX	COLLISION	HIT FENCE
794	840628	3 WHEELS	DRIVER	14	M	RICHFIELD TWP	OAKLAND	MI	OVERTURNED	FELL AGAINST SHARP BRANCH
795	840628	3 WHEELS	DRIVER	11	M	SIOUX CREEK TWP		WI	THROWN	HIT BY HANDLE BAR
796	840627	3 WHEELS	PASSENGER	16	F	ROTTERDAM	SCHENECTADY	NY	COLLISION	HIT TRUCK/HIT OTHER ATV/THROWN
797	840627	3 WHEELS	DRIVER	13	M	ROTTERDAM	SCHENECTADY	NY	COLLISION	HIT TRUCK/HIT ANOTHER ATV
798	840625	3 WHEELS	DRIVER	20	M	FOREST	ST CROIX	WI	COLLISION	HIT TREE
799	840625	4 WHEELS	DRIVER	48	F	BERLIN	SUCCESS TWP	NH	THROWN	STRUCK ROCK
800	840621	3 WHEELS	DRIVER	18	M	RAVENNA	MUSKEGON	MI	COLLISION	HIT VAN
801	840620	3 WHEELS	DRIVER	35	M	YORK		ME	COLLISION	HIT TREE/THROWN
802	840618	3 WHEELS	DRIVER	36	F	BAKERSFIELD	KERN	CA	COLLISION	HIT OTHER ATV
803	840618	3 WHEELS	DRIVER	19	M	DOVER	STEWART	TN	COLLISION	HIT TREE
804	840617	3 WHEELS	DRIVER	15	F	MEMPHIS		TN	THROWN	
805	840611	3 WHEELS	DRIVER	24	M	ARIVACA	PIMA	AZ	COLLISION	HIT CEMENT POST
806	840609	3 WHEELS	DRIVER	35	M	SHREVEPORT	CADDO	LA	COLLISION	HIT OTHER ATV/ROLLOVER/THROWN
807	840608	3 WHEELS	DRIVER	42	M	MONROEVILLE		AL	COLLISION	HIT TREE
808	840604	3 WHEELS	DRIVER	39	F	DOVRE	BARRON	WI	COLLISION	HIT BARBED WIRE FENCE
809	840604	3 WHEELS	PASSENGER	07	M	SABETHA	NEMAHA	KS	OVERTURNED	THROWN/HEAD HIT ROCK
810	840603	3 WHEELS	PASSENGER	03	M	BIG BEAR LAKE	SAN BERNARDINO	CA	TERRAIN CHG	STRUCK RUT/OVER EMBANKMENT
811	840602	3 WHEELS	DRIVER	44	M	LAS VEGAS	CLARK	NV	OVERTURNED	STRUCK BUMP/AIRBORNE
812	840602	3 WHEELS	DRIVER	28	M	HASTINGS	DAKOTA	MN	COLLISION	HIT 2ND ATV/FLIPPED
813	840531	3 WHEELS	DRIVER	05	M	JORDAN VALLEY	MALHEUR	OR	OVERTURNED	
814	840527	3 WHEELS	DRIVER	11	M	MARIETTA		GA	THROWN	
815	840527	3 WHEELS	PASSENGER	04	M			UT	TERRAIN CHG	RAN OFF BRIDGE/DROWNED
816	840527	3 WHEELS	DRIVER	21	M	TUCSON	PIMA	AZ	TERRAIN CHG	OVER EMBANKMENT
817	840527	3 WHEELS	PASSENGER	18	F	ADAMS TOWNSHIP	SENECA	OH	OVERTURNED	THROWN

YEAR=84

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
818	840527	3 WHEELS	DRIVER	15	M			UT	OVERTURNED	LANDED ON VICTIM
819	840526	3 WHEELS	DRIVER	06	M	DETROIT LAKES	BECKER	MN	OVERTURNED	LANDED ON VICTIM
820	840526	3 WHEELS	DRIVER	15	M	CLOVIS	CURRY	NM	UNKNOWN	
821	840525	3 WHEELS	DRIVER	30	M	OIL CITY		UT	OVERTURNED	LANDED ON VICTIM
822	840522	3 WHEELS	DRIVER	27	M	VICTORVILLE	SAN BERNARDINO	CA	THROWN	STRUCK OBJECT
823	840521	3 WHEELS	DRIVER	32	M	CORTLAND	CORTLAND	NY	OVERTURNED	STRUCK DITCH
824	840519	3 WHEELS	DRIVER	11	M	IROQUAIN		IL	COLLISION	HIT TRUCK
825	840518	3 WHEELS	DRIVER	12	M	TRINITY CENTER	TRINITY	CA	COLLISION	HIT TREE/LANDED ON VICTIM
826	840512	3 WHEELS	PASSENGER	18	F	BUFFALO TWP	PERRY	PA	THROWN	STRUCK BY ATV
827	840505	3 WHEELS	DRIVER	36	M	CHESTER		MA	COLLISION	HIT LEDGE/THROWN
828	840505	3 WHEELS	PASSENGER	17	F	NAPA	NAPA	CA	COLLISION	HIT CABLE
829	840504	3 WHEELS	DRIVER	19	M	NAPA	NAPA	CA	COLLISION	HIT CABLE
830	840429	4 WHEELS	DRIVER	17	M	SPEEDWELL	UNION	TN	THROWN	STRUCK RUT
831	840427	3 WHEELS	DRIVER	21	M	GOSHEN	ELKHART	IN	COLLISION	HIT TREES/THROWN
832	840425	3 WHEELS	DRIVER	07	M	BRITTON		SD	COLLISION	HIT FENCE
833	840422	3 WHEELS	DRIVER	24	M	ANIAK		AK	COLLISION	HIT POST/LANDED ON VICTIM
834	840422	3 WHEELS	DRIVER	11	M	CINCO	KERN	CA	TERRAIN CHG	EMBANKMENT
835	840421	3 WHEELS	DRIVER	24	M	BEMIS	CODINGTON	SD	COLLISION	HIT EMBANKMENT/THROWN
836	840421	3 WHEELS	DRIVER	18	M	COLUMBIA	MAURY	TN	COLLISION	HIT CULVERT/THROWN INTO POLE
837	840420	3 WHEELS	PASSENGER	11	M	PASS CHRISTIAN		MS	FELL	
838	840416	3 WHEELS	UNKNOWN	40	M	LITTLE ROCK	PULASKI	AR	UNKNOWN	
839	840415	3 WHEELS	DRIVER	21	M	GRANTSVILLE		UT	COLLISION	HIT MOTORCYCLE
840	840414	3 WHEELS	DRIVER	22	M	WIGGINS		MS	COLLISION	HIT TREE/THROWN
841	840412	4 WHEELS	DRIVER	13	M	VERONA	DANE	WI	ATV CONTACT	STRUCK RUT/HIT HANDLEBAR
842	840410	3 WHEELS	DRIVER	78	M	SYLVAN TWP	RICHLAND	WI	FELL	STRUCK BUMP
843	840407	3 WHEELS	DRIVER	25	M	GULFPORT	HARRISON	MS	OVERTURNED	LANDED ON VICTIM

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                    DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES                              35
                     REPORTED FOR THE PERIOD JAN 1 1982 THROUGH DEC 8 1987          17:16 FRIDAY, FEBRUARY 5, 1988

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OBS  FDATEDTH  FTYPEVEH   FVICTIM     FAGE  FSEX  FCITY         FCOUNTY         FSTATE  FHP         FSUM

844  840404    3 WHEELS   PASSENGER    14    M    SWEETWATER    DADE              FL    COLLISION   HIT TREES/LANDED IN CANAL
845  840329    3 WHEELS   DRIVER       26    M    AZUSA                           CA    COLLISION   HIT POST/OVERTURNED/THROWN
846  840318    3 WHEELS   DRIVER       34    F    EL CENTRO     IMPERIAL          CA    OVERTURNED  LANDED ON VICTIM
847  840318    3 WHEELS   DRIVER       15    F    LITTLE RIVER  OCONTO            WI    OVERTURNED  LANDED ON VICTIM
848  840316    3 WHEELS   DRIVER       09    M    EADS          FAYETTE           TN    COLLISION   HIT BY TRUCK
849  840314    3 WHEELS   DRIVER       19    M    BELMONT       FRANK             NY    COLLISION   HIT BY TRUCK/THROWN
850  840310    3 WHEELS   DRIVER       16    M    ROUND ROCK    TRAVIS            TX    COLLISION   HIT TREE
851  840304    3 WHEELS   DRIVER       07    M    HEADLAND      HENRY             AL    OVERTURNED  LANDED ON VICTIM
852  840304    3 WHEELS   PASSENGER    04    M    NOVA          ASHLAND           OH    OVERTURNED  THROWN
853  840303    3 WHEELS   DRIVER       23    M    MARRERO       JEFFERSON         LA    COLLISION   HIT TELEPHONE POLE
854  840229    3 WHEELS   DRIVER       35    M    MARYVILLE                       TN    COLLISION   HIT TELEPHONE POLE
855  840229    UNKNOWN    UNKNOWN      45    M    YUMA          YUMA              AZ    UNKNOWN
856  840224    3 WHEELS   DRIVER       48    F    EL CENTRO     IMPERIAL          CA    OVERTURNED  LANDED ON VICTIM
857  840224    3 WHEELS   DRIVER       26    M    WATERLOO      BLACKHAWK         IA    COLLISION   HIT UTILITY POLE
858  840219    3 WHEELS   DRIVER       06    M    EL CENTRO                       CA    OVERTURNED  STRUCK HOLE/LANDED ON VICTIM
859  840212    3 WHEELS   DRIVER       40    M    MIDLAND                         TX    OVERTURNED  LANDED ON VICTIM
860  840208    3 WHEELS   DRIVER       17    M    AITKIN        AITKIN            MN    COLLISION   HIT TRUCK
861  840202    3 WHEELS   DRIVER       19    M    VIENNA        TRUMBULL          OH    COLLISION   HIT TREE/AIRBORNE/THROWN
862  840202    3 WHEELS   PASSENGER    15    M    VIENNA        TRUMBULL          OH    COLLISION   HIT TREE
863  840124    3 WHEELS   DRIVER       14    M                  SAN BERNADINO     CA    OVERTURNED  LANDED ON VICTIM
864  840122    3 WHEELS   DRIVER       08    M    FALLON        CHURCHILL         NV    THROWN
865  840118    4 WHEELS   BYSTANDER    31    F    MIAMI                           FL    COLLISION   BYSTANDER HIT BY ATV
866  840109    3 WHEELS   DRIVER       18    M    FALSE PASS                      AK    COLLISION   HIT BRIDGE

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                           DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL-TERRAIN VEHICLES
                            REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987          17:16 FRIDAY, FEBRUARY 5, 1988  36
---------------------------------------------------------------- YEAR=83 ---------------------------------------------------------------

OBS  FDATEDTH  FTYPEVEH  FVICTIM    FAGE FSEX FCITY              FCOUNTY          FSTATE FHP          FSUM

867  831228   3 WHEELS  DRIVER      51   M   TIFFIN                                OH   THROWN       RAN OVER LIMB/PUNCTURED TIRE
868  831216   3 WHEELS  DRIVER      17   M   LAFAYETTE                             LA   COLLISION    HIT TEL EQUIP/THROWN
869  831204   3 WHEELS  UNKNOWN     06   M   BOGALUSA           WASHINGTON         LA   UNKNOWN
870  831124   3 WHEELS  DRIVER      14   M   DALLESPORT         KLICKITAT          WA   COLLISION    HIT TREE/THROWN
871  831108   4 WHEELS  DRIVER      13   M   HOBOKEN                               NJ   COLLISION    HIT METAL GATE
872  831104   3 WHEELS  DRIVER      24   M   ELLINGTON          OUTAGAMIE          WI   OVERTURNED   LANDED ON VICTIM
873  831101   3 WHEELS  DRIVER      14   M   POLSON             MISSOULA           MT   OVERTURNED   THROWN
874  831031   3 WHEELS  DRIVER      13   M   GLEN HEIGHTS       DALLAS             TX   OVERTURNED   LANDED ON VICTIM
875  831030   3 WHEELS  DRIVER      16   M   WHITE BEAR LAKE    RAMSEY             MN   TERRAIN CHG  EMBANKMENT/LANDED ON VICTIM
876  831029   3 WHEELS  DRIVER      16   M   ASHLAND            BENTON             MS   COLLISION    HIT OTHER ATV
877  831028   3 WHEELS  DRIVER      15   M   RANCHO CUCAMONGA   SAN BERNARDINO     CA   OVERTURNED   LANDED ON VICTIM
878  831024   3 WHEELS  DRIVER      12   M   BELOIT                                WI   COLLISION    HIT BY CAR
879  831023   3 WHEELS  DRIVER      18   M   GOODWELL TWP       NEWAYGO            MI   OVERTURNED   STRUCK ROCK/THROWN
880  831020   3 WHEELS  DRIVER      33   M   TOLEDO                                OH   OVERTURNED   LANDED ON VICTIM
881  831015   3 WHEELS  DRIVER      61   M   DULUTH             AITKIN             MN   THROWN       STRUCK STUMP
882  831014   3 WHEELS  DRIVER      45   M   ADKINS             BEXAR              TX   COLLISION    HIT OTHER ATV/THROWN
883  831011   3 WHEELS  DRIVER      24   M   MINNEOLA           CLARK              KS   OVERTURNED   LANDED ON VICTIM
884  831009   3 WHEELS  DRIVER      15   M   BARNES CORNERS                        NY   COLLISION    HIT MOTORCYCLE
885  831009   3 WHEELS  DRIVER      17   M   PATTERSONVILLE     SCHENECTADY        NY   COLLISION    HIT TREE/THROWN
886  831007   3 WHEELS  DRIVER      13   M   MACON              MACON              IL   COLLISION    HIT BY MOTORCYCLE
887  831004   3 WHEELS  DRIVER      36   M   MARION             SHAWANO            WI   COLLISION    HIT TREE
888  831001   3 WHEELS  DRIVER      16   M   BURGESS            BOND               IL   COLLISION    HIT CAR
889  830918   3 WHEELS  DRIVER      16   F   HOLYYOKE           CARLTON            MN   COLLISION    HIT BY TRAIN
890  830918   3 WHEELS  PASSENGER   04   M   HOLYYOKE           CARLTON            MN   COLLISION    HIT BY TRAIN
891  830918   3 WHEELS  PASSENGER   07   M   HOLYYOKE           CARLTON            MN   COLLISION    HIT BY TRAIN
892  830917   3 WHEELS  DRIVER      37   M   ANDERSON                              AK   COLLISION    HIT TRUCK
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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
893	830917	3 WHEELS	DRIVER	32	M	ILIAMNA		AK	THROWN	STRUCK BERM
894	830913	3 WHEELS	DRIVER	07	M	ASHLAND	BENTON	MS	OVERTURNED	STRUCK HOLE/LANDED ON VICTIM
895	830911	3 WHEELS	PASSENGER	11	F	SALT LAKE CITY	SALT LAKE	UT	THROWN	STRUCK DITCH
896	830910	3 WHEELS	DRIVER	32	M	CLAM GULCH		AK	THROWN	STRUCK ROCK
897	830904	3 WHEELS	DRIVER	13	M	STURGEON		WI	OVERTURNED	THROWN
898	830904	3 WHEELS	DRIVER	15	M	SARATOGA	WINONA	MN	COLLISION	HIT BY CAR
899	830903	4 WHEELS	DRIVER	18	M	RICHMOND	CHESTERFIELD	VA	COLLISION	HIT CAR/THROWN
900	830828	3 WHEELS	DRIVER	28	F	EKLUTANA LAKE	UNINCORPORATED	AK	OVERTURNED	STRUCK POTHOLES
901	830826	3 WHEELS	DRIVER	24	M	BARROW		AK	COLLISION	HIT TRUCK
902	830819	3 WHEELS	DRIVER	15	M	PIERREPONT		NY	COLLISION	HIT CAR
903	830817	3 WHEELS	DRIVER	53	M	WASILLA		AK	THROWN	STRUCK ROCK
904	830815	3 WHEELS	DRIVER	30	M	QUINHAGAK		AK	OVERTURNED	THROWN
905	830814	3 WHEELS	DRIVER	15	M	FAIRBANKS		AK	OVERTURNED	STRUCK DEPRESSION/THROWN
906	830814	3 WHEELS	DRIVER	14	F	MEDFORD		WI	UNKNOWN	
907	830813	3 WHEELS	DRIVER	12	F	LONG LAKE ROAD	UNINCORPORATED	AK	COLLISION	HIT BY TRUCK
908	830806	4 WHEELS	DRIVER	13	M	ALTAMONT	FRANKLIN	NY	OVERTURNED	LANDED ON VICTIM
909	830802	3 WHEELS	DRIVER	09	M	LODI	SAN JOAQUIN	CA	OVERTURNED	INTO SWIMMING POOL
910	830730	3 WHEELS	DRIVER	24	M	LIND	WAUPACA	WI	COLLISION	HIT HAY BALER/THROWN
911	830730	3 WHEELS	DRIVER	17	M	NAPLES	COLLIER	FL	COLLISION	HIT GRAVEL PILE/THROWN
912	830727	3 WHEELS	PASSENGER	06	F	RACELAND	LAFOURCHE	LA	THROWN	VICTIM STRUCK BY HANDLEBARS
913	830722	3 WHEELS	PASSENGER	08	F	BOWERVILLE	PENNINGTON	MN	FELL	STRUCK POTHOLE
914	830720	3 WHEELS	DRIVER	14	M	ST HILAIRE		MN	OVERTURNED	LANDED ON VICTIM
915	830717	3 WHEELS	DRIVER	18	M	CHAMPLAIN	CLIN	NY	THROWN	LIFTED FRONT WHEEL
916	830716	3 WHEELS	DRIVER	18	M	VERNON	JACKSON	LA	COLLISION	HIT TREE
917	830714	3 WHEELS	DRIVER	18	M	QUINHAGAK		AK	OVERTURNED	THROWN
918	830714	3 WHEELS	DRIVER	73	M	LOURISTON	CHIPPEWA	MN	OVERTURNED	LANDED ON VICTIM

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OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
919	830712	3 WHEELS	DRIVER	20	F	SHREVEPORT	CADDO	LA	COLLISION	HIT CAR/THROWN
920	830712	3 WHEELS	DRIVER	63	M	CHATEAUGAY	BURKE	NY	COLLISION	HIT GUIDE WIRE
921	830703	3 WHEELS	DRIVER	33	F	BIG LAKE		AK	TERRAIN CHG	EMBANKMENT/LANDED ON VICTIM
922	830701	3 WHEELS	DRIVER	22	M	SAN DIEGO		CA	THROWN	ONTO ROCKS
923	830628	3 WHEELS	DRIVER	12	M	JOHNSTOWN	PROVIDENCE	RI	OVERTURNED	LANDED ON VICTIM
924	830626	3 WHEELS	DRIVER	21	M	JORDAN		MT	OVERTURNED	LANDED ON VICTIM
925	830625	3 WHEELS	DRIVER	12	M	DICKSON	DICKSON	TN	COLLISION	HIT TREE
926	830624	3 WHEELS	DRIVER	10	F	NIDAROS TWP		MN	OVERTURNED	LANDED ON VICTIM
927	830623	3 WHEELS	DRIVER	66	M	PRAIRIE CITY		SD	COLLISION	HIT BY TRUCK
928	830612	3 WHEELS	PASSENGER	14	M	BROOKHAVEN	LINCOLN	MS	COLLISION	HIT TRUCK
929	830606	3 WHEELS	PASSENGER	21	M	BRADFORD		PA	COLLISION	HIT TREE
930	830605	3 WHEELS	DRIVER	15	M	DAVENPORT	DELA	NY	COLLISION	HIT TREE
931	830604	3 WHEELS	DRIVER	16	M	ALDEN	ERIE	NY	COLLISION	HIT STONE PILE/THROWN
932	830602	3 WHEELS	DRIVER	17	F	MIFFLIN	JUNIATA	PA	COLLISION	HIT TREE/THROWN
933	830530	3 WHEELS	PASSENGER	03	F	MALVERN	HOT SPRINGS	AR	OVERTURNED	LANDED ON VICTIM
934	830528	3 WHEELS	DRIVER	14	M	LIBERTY	AMITE	MS	COLLISION	HIT TRUCK/THROWN
935	830524	3 WHEELS	DRIVER	08	M	PARAGOULD	GREENE	AR	OVERTURNED	LANDED ON VICTIM
936	830507	3 WHEELS	PASSENGER	06	M	RHINE		GA	COLLISION	HIT POLE
937	830504	3 WHEELS	DRIVER	17	M	GRAND FORKS	GRAND FORKS	ND	COLLISION	HIT CAR
938	830504	3 WHEELS	PASSENGER	06	M	WOLF LAKE		IL	OVERTURNED	THROWN
939	830424	3 WHEELS	PASSENGER	30	F	LAROSE	LAFOURCHE	LA	OVERTURNED	STRUCK SHELLS/DITCH
940	830414	3 WHEELS	DRIVER	20	M	ABERDEEN		MS	COLLISION	HIT TREE
941	830404	3 WHEELS	DRIVER	12	M	MARTIN	ROCK	MN	COLLISION	HIT CAR
942	830319	3 WHEELS	DRIVER	11	M	COLUMBIA	MARION	MS	OVERTURNED	LANDED ON VICTIM
943	830318	3 WHEELS	UNKNOWN	14	F	QUINCY		IL	COLLISION	HIT BY CAR
944	830318	3 WHEELS	UNKNOWN	13	F	QUINCY		IL	COLLISION	HIT BY CAR

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                         DEATHS ASSOCIATED WITH 3 AND 4 WHEELED ALL TERRAIN VEHICLES                         39
                          REPORTED FOR THE PERIOD JAN 1,1982 THROUGH DEC 8,1987        17:16 FRIDAY, FEBRUARY 5, 1988

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OBS   FDATEDTH   FTYPEVEH   FVICTIM     FAGE  FSEX     FCITY        FCOUNTY     FSTATE  FHP           FSUM

945    830314    3 WHEELS   DRIVER       14    M    NATCHITOCHES                  LA    OVERTURNED    LANDED ON VICTIM

946    830302    3 WHEELS   DRIVER       14    M    SAVANNAH       HARDIN         TN    COLLISION     HIT TREE

947    830220    3 WHEELS   DRIVER       18    M    WEST POINT     CUMING         NE    COLLISION     HIT BY TRUCK

948    830207    3 WHEELS   PASSENGER    13    M    VIDALIA        CONCORDIA      LA    COLLISION     HIT BY OTHER ATV/THROWN

949    830109    3 WHEELS   DRIVER       18    M    QUARRYVILLE                   PA    COLLISION     HIT TREE

950    830105    3 WHEELS   DRIVER       44    M    WHITE LAKE     WAUPACA        WI    TERRAIN CHG   WENT THROUGH THIN ICE

951    830101    3 WHEELS   DRIVER       25    M    GRAFTON        OXFORD         NH    OVERTURNED    THROWN

N=     85
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-- YEAR=82 --

OBS	FDATEDTH	FTYPEVEH	FVICTIM	FAGE	FSEX	FCITY	FCOUNTY	FSTATE	FHP	FSUM
952	821226	3 WHEELS	PASSENGER	05	F	VERMI		LA	OVERTURNED	DOWN EMBANKMENT
953	821201	3 WHEELS	DRIVER	54	M	BLUFFTON	YELL	AR	UNKNOWN	
954	821031	3 WHEELS	DRIVER	10	M	PALESTINE	ST FRANCIS	AR	OVERTURNED	LANDED ON VICTIM
955	821024	3 WHEELS	DRIVER	31	M	EL CENTRO	IMPERIAL	CA	TERRAIN CHG	20-FOOT DUNE/OVRTND ON VICTIM
956	820926	3 WHEELS	DRIVER	24	M	SINCLAIRVILLE	CHAUTAUQUA	NY	COLLISION	HIT TREE
957	820908	3 WHEELS	PASSENGER	11	F	UBLY		MI	THROWN	STRUCK RUT
958	820812	3 WHEELS	DRIVER	16	M	SAUKVILLE		WI	FELL	CYCLE WHEEL HIT VICTIM
959	820804	3 WHEELS	DRIVER	19	M	NEW ALBANY	PONTOTOC	MS	COLLISION	HIT OTHER ATV
960	820726	3 WHEELS	DRIVER	10	M	BELMOND	WRIGHT	IA	OVERTURNED	LANDED ON VICTIM
961	820715	3 WHEELS	DRIVER	12	M	TIPP CITY	MONTGOMERY	OH	COLLISION	HIT BY TRUCK/THROWN
962	820704	3 WHEELS	DRIVER	66	M	FINLAYSON	PINE	MN	OVERTURNED	
963	820704	3 WHEELS	DRIVER	28	M	PISMO BEACH	SAN LUIS OBISPO	CA	TERRAIN CHG	FELL FROM 15 FT SAND DUNE
964	820630	3 WHEELS	DRIVER	66	M	GORDO	PICKENS	AL	THROWN	LANDED ON VICTIM
965	820620	3 WHEELS	DRIVER	20	M	ABBEVILLE	VERMILLION	LA	OVERTURNED	LANDED ON VICTIM
966	820606	3 WHEELS	DRIVER	14	M	OTAY MESA	SAN DIEGO	CA	OVERTURNED	STRUCK GULLY/THROWN
967	820605	3 WHEELS	UNKNOWN	08	M	TERRE HAUTE		IN	UNKNOWN	
968	820530	3 WHEELS	DRIVER	06	M	SPRINGVILLE	MARION	IN	OVERTURNED	LANDED ON VICTIM
969	820529	3 WHEELS	PASSENGER	07	F	PHILADELPHIA	NESHOBA	MS	OVERTURNED	FELL OFF
970	820430	3 WHEELS	DRIVER	70	M	EL CENTRO	IMPERIAL	CA	TERRAIN CHG	OFF CLIFF/FLIPPED ONTO VICTIM
971	820418	3 WHEELS	DRIVER	14	F	SHELBY		MI	OVERTURNED	STEEP EMBANKMENT/THROWN
972	820409	3 WHEELS	DRIVER	18	M	UNION	IMPERIAL	CA	OVERTURNED	LANDED ON VICTIM
973	820328	3 WHEELS	DRIVER	24	M	TUCSON	PIMA	AZ	OVERTURNED	LANDED ON VICTIM
974	820223	3 WHEELS	DRIVER	22	M	PHOENIX	MARICOPA	AZ	OVERTURNED	LANDED ON VICTIM
975	820221	3 WHEELS	DRIVER	25	F	SAN DIEGO	SAN DIEGO	CA	OVERTURNED	LANDED ON VICTIM
976	820214	3 WHEELS	DRIVER	15	M	MESA		AZ	OVERTURNED	FELL INTO MINING PIT
977	820127	3 WHEELS	DRIVER	07	M	GILBERT	FRANKLIN	LA	OVERTURNED	THROWN

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UNITED STATES GOVERNMENT
MEMORANDUM

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON,D.C. 20207

MAR 3 [illegible]

TO : Nicholas Marchica, ATV Task Force

Through: Dr. Robert D. Verhalen, AED, Epidemiology

FROM : Rae Newman, EPHA RN

SUBJECT: Repurchase of ATVs by Manufacturers

In response to a request we anticipate receiving from Capitol Hill, we have calculated estimated injuries for five options involving repurchase of ATVs by manufacturers.

The assumptions and results of this evaluation are discussed for each of the five options in the sections following and summarized in the attached Table. The options evaluated the manufacturer repurchase of 3 combinations of three and four-wheeled ATVs under different conditions; these included assumptions that all repurchased ATVs were resold either to the general public or to drivers 16 years or older, and assumptions that three-wheeled ATVs were not resold. All owners of repurchased ATVs replaced them with four-wheeled ATVs.

Based on these four year projections, the highest injury reductions would occur under the following conditions:

- o Not reselling three-wheeled ATVs repurchased by manufacturers (Options C and D).
- o Limiting resale of repurchased ATVs to drivers 16 years or older (Options B, D, and E).
- o Maximizing repurchase of three and four-wheeled ATVs used by drivers less than 16 years old (Option E).

The options with the highest injury reduction per 100 ATVs repurchased were Option D (4.5 injuries per 100 ATVs), Option E (2.5 injuries per 100 ATVs) and Option C (2.4 injuries per 100 ATVs).

Table
Effect of Manufacturer Repurchase of ATVs on Hospital Emergency Room Treated Injuries Over a 4 Year Period (1988-1991)

OPTIONS	ATVs REPURCHASED BY MANUFACTURER			ATVs RESOLD	CHANGE IN ESTIMATED INJURIES (1988-1991)			
					INCREASE		DECREASE	
	Type	Percent	Number		Number	Per 100 ATVs Repurchased	Number	Per 100 ATVs Repurchased
A	3-Wheeled,	(30%)	390,000	Yes (All Drivers)	4,400	1.1		
	4-Wheeled, Drivers < 16	(30%)	128,000	Yes (All Drivers)			900	0.7
	Total		518,000		3,500	0.7		
B	3-Wheeled, Drivers < 16	(100%)	627,000	Yes (Drivers ≥ 16)			10,700	1.7
	Drivers ≥ 16	(30%)						
	4 Wheeled, Drivers < 16	(30%)	128,000	Yes (Drivers ≥ 16)			900	0.7
	Total		755,000				11,600	1.5
C	3-Wheeled,	(30%)	390,000	No			11,400	2.9
	4-Wheeled, Drivers ≤ 16	(30%)	128,000	Yes (All Drivers)			900	0.7
	Total		518,000				12,300	2.4
D	3-Wheeled, Drivers < 16	(100%)	627,000	No			33,000	5.3
	Drivers ≥ 16	(30%)						
	4-Wheeled, Drivers < 16	(30%)	128,000	Yes (Drivers ≥ 16)			900	0.7
	Total		755,000				33,900	4.5
E	3-Wheeled, Drivers < 16	(100%)	338,000	Yes (Drivers ≥ 16)			16,100	4.8
	4-Wheeled, Drivers < 16	(100%)	426,000	Yes (Drivers ≥ 16)			3,000	0.9
	Total		764,000				19,100	2.5

Option A

Manufacturers would repurchase 30 percent of all three-wheeled ATVs (390,000) and 30 percent of the four-wheeled ATVs used by drivers under 16 years old (128,000). The resale of the three-wheeled ATVs would result in an increase of 4,400[1/] injuries; the resale of the four-wheeled ATVs would result in a decrease of 900 injuries. The net effect would be an increase of 3,500 emergency room treated injuries or 0.7 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the ATVs would be resold to drivers with less than one year of experience. The risk of injury for the resale group would be lower than for the original group as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-Wheeled ATVs Status Quo All Drivers	Three-Wheeled ATVs Resale All Drivers	Four-Wheeled ATVs Status Quo Drivers<16	Four-Wheeled ATVs Resale or Replacement All Drivers	Four-Wheeled ATVs Resale or Replacement Drivers<16
1988	under 1 year	13.2	11.8	7.6	3.6	7.1
	1 year or more	2.8	2.4	2.4	1.6	2.2
1989	1 year or more	2.6	2.2	2.3	1.6	2.1
1990	1 year or more	2.7	2.4	2.4	1.6	2.2
1991	1 year or more	2.6	2.2	2.2	1.4	2.0

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown below:

	Three Wheeled ATVs	Four Wheeled ATVs
1988	100%	100%
1989	83%	94%
1990	65%	76%
1991	46%	59%

[1/] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

Option B

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years old (338,000) and 30 percent of three-wheeled ATVs used by drivers 16 years or older (289,000), a total of 627,000 ATVs. Manufacturers also would repurchase 30 percent of four-wheeled ATVs used by drivers under 16 years old (128,000). The 3-wheeled ATVs would be resold to drivers 16 years or older, resulting in a decrease of 10,700 injuries[1] and the four-wheeled ATVs would be resold to drivers 16 years or older, resulting in a decrease of 900 injuries. The net effect would be an decrease of 11,600 emergency room treated injuries or 1.5 injuries per 100 ATVs repurchased.

These projection assumed that one-third of the ATVs would be resold to drivers with less than one year of experience. The risk of injury for the resale group would be lower than for the original owners as shown in the Table below:

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-wheeled ATVs			Four-wheeled ATVs		
		Status Quo		Resale	Status Quo	Resale or Replacement	
		Drivers <16	Drivers ≥16	Drivers ≥16	Drivers <16	Drivers<16	Drivers≥ 16
1988	under 1 year	16.4	10.5	10.0	7.6	7.1	2.4
	1 year or more	5.4	2.0	1.9	2.4	2.2	1.3
1989	1 year or more	5.0	1.9	1.8	2.3	2.1	1.3
1990	1 year or more	5.2	2.0	1.9	2.4	2.2	1.3
1991	1 year or more	5.0	1.9	1.8	2.2	2.0	1.2

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

[1] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

Option C

Manufacturers would repurchase 30 percent of all three-wheeled ATVs (390,000 ATVs) and would not resell them. The sellers would replace them with four-wheeled ATVs. Manufacturers also would repurchase 30 percent of four-wheeled ATVs used by drivers less than 16 years old (128,000 ATVs) and would resell them. The effect of the replacement of the three-wheeled ATVs by the four-wheeled ATVs would be an 11,400 reduction in the injuries. The resale of the four-wheeled ATV would result in a reduction of 900 injuries. The net effect would be a reduction of 12,300 emergency room treated injuries or 2.4 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the four-wheeled ATVs would be resold to drivers with less than one year of experience. The risk of injury for the ATVs replaced or resold would be lower than for the original groups as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

		Three-wheeled ATVs	Four-wheeled ATVs		
		Status Quo	Status Quo	Resale or Replacement	
Year	Experience	All Drivers	Drivers <16	All Drivers	Drivers <16
1988	under 1 year	13.2	7.6	3.6	7.1
	1 year or more	2.8	2.4	1.6	2.2
1989	1 year or more	2.6	2.3	1.6	2.1
1990	1 year or more	2.7	2.4	1.6	2.2
1991	1 year or more	2.6	2.2	1.4	2.0

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

Option D

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years of age (338,000) and 30 percent of three-wheeled ATVs used by drivers 16 years or older (289,000) a total of 627,000 ATVs but would not resell them. The three-wheeled ATVs would be replaced by four-wheeled ATVs, resulting in a reduction of 33,000 injuries. Manufacturers would repurchase 30 percent of four-wheeled ATVs used by drivers under 16 years (128,000) and resell them to drivers 16 years or older. This action would result in a decrease of 900 injuries. The net effect would be a reduction of 33,900 emergency room treated injuries or 4.5 injuries per 100 ATVs repurchased.

These projections assumed that one-third of the four-wheeled ATVs were resold to drivers with less than one year of experience. The risk of injury for the ATVs replaced or resold would be lower than for the original groups as shown in the Table below.

RISK OF INJURY PER 100 ATVs IN USE

Year	Experience	Three-wheeled ATV		Four-wheeled ATVs		
		Status Quo		Status Quo	Resale or Replacement	
		Drivers < 16	Drivers ≥ 16	Drivers < 16	Drivers < 16	Drivers ≥ 16
1988	under 1 year	16.4	10.5	7.6	7.1	2.4
	1 year or more	5.4	2.0	2.4	2.2	1.3
1989	1 year or more	5.0	1.9	2.3	2.1	1.3
1990	1 year or more	5.2	2.0	2.4	2.2	1.3
1991	1 year or more	5.0	1.9	2.2	2.0	1.2

These projections also assumed that for the ATVs repurchased in 1988, the percent in use would decrease each year as shown in Option A.

Option E

Manufacturers would repurchase all three-wheeled ATVs used by drivers under 16 years (338,000) and would resell them to drivers 16 years or older.[1] This action would result in a decrease of 16,100 injuries. Manufacturers also would repurchase all four-wheeled ATVs used by drivers under 16 years (426,000) and would resell them to drivers 16 years or older. This action would result in a decrease of 3,000 injuries. The net effect would be a reduction of 19,100 emergency room injuries or 2.5 injuries per 100 ATVs repurchased.

The projections were based on the risk assumptions described in Option B.

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[1] The original owner would replace the three-wheeled ATV with a four-wheeled ATV; the purchaser of the resold three-wheeled ATV was buying it instead of a four-wheeled ATV.

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

-8 MAR 19[illegible]

To: Nicholas V. Marchica, OEX
Thru: Warren J. Prunella, AED, Economic Analysis W/P
From: Gregory B. Rodgers, ECPA, GR
Subject: The Economic Impact of Several ATV Recall Options

We have been asked to provide an assessment of several possible ATV recall options. Since there are an unlimited variety of conceivable options, we are examining five scenarios which may illustrate the range of possible impacts. Injury reduction estimates used to calculate benefits were provided by the Directorate for Epidemiology.

Crucial to the assessments are the estimates of the numbers of ATVs likely to be returned. In two of the scenarios we assume that 30 percent of ATVs will be returned. This is probably an upper bound of the number of ATVs that would be returned, and one that is probably not attainable absent some inducement such as a premium. In addition, we also examine several scenarios in which either all three-wheelers used by children, or all ATVs used by children, are returned during a recall. These latter scenarios are probably unrealistic because it is unlikely that all ATVs driven by any class of drivers would be returned. However, the results of these scenarios represent what might be considered by some an ideal outcome of a recall effort. Also important in the assessments is the assumption that the number of deaths will not be affected by any redistribution of ATVs caused by the recall.

Finally, we should mention that the magnitudes of the costs and benefits of the scenarios discussed below depend on the proportions of ATVs returned under a recall. Consequently, if we have overestimated the number of ATVs that would be returned, the estimated costs and benefits will probably also be overestimated, but not disproportionately.

Scenario A. Recall with resale; 30 percent of eligible ATVs Returned.

For the first scenario we assume that the recall applies to all three-wheeled ATVs, four-wheeled ATVs driven by children less than 16, and that the ATVs can be resold. We further assume that 30 percent of the eligible ATVs will be returned for a refund. Under these assumptions, about 520,000 ATVs would be returned; 390,000 three-wheelers and 130,000 four-wheelers.

The Directorate for Epidemiology estimated that the number of emergency room treated injuries would increase by about 3,500, relative to the status quo under this scenario. There would probably also be another 5,250 medically attended injuries. Thus, there do not appear to be any net benefits: according to the Injury Cost Model, injury costs might increase by about $43,750,000. There may, however, be a change in the age distribution of those injured. Even though total injuries may increase, fewer injuries would involve children.

The costs under this scenario would be considerable. Since the ATVs returned will be resold, the major costs are transactions costs. These are the costs to manufacturers or their representatives (dealers for the most part) of having to buy back the ATV, completing any paperwork necessary for the recall, and then actually selling the ATV. Moreover, these are real costs to society in the sense that these resources would not be available for other alternative uses. (Since the dealers might have to pay, on average, about $750 dollars for each returned ATV under the recall scenarios, they are unlikely to junk an ATV that can be resold.) We do not know precisely what these transaction costs will be, but $75 per ATV may be a reasonable estimate. At $75 per ATV, the costs could amount to about $39 million.

This scenario thus results in large costs associated with an increase in injuries and injury costs.

Scenario B **Recall with resale; all three-wheelers driven by children under 16 are returned, and 30 percent of remaining eligible three and four-wheeled ATVs are returned.**

Here we assume that all three-wheeled ATVs driven by children under 16 are returned, as well as 30 percent of other three-wheelers and 30 percent of the four-wheeled ATVs driven by children. Although it is unlikely that all three-wheeled ATVs driven by children would be returned, the results of this scenario represent what some would characterize as close to an ideal outcome of a recall effort.

This scenario would lead to the return of about 750,000 ATVs which can be resold to the public. The scenario is similar to A, except that we assume all three-wheeled ATVs used by children are returned, rather than 30 percent.

The Directorate for Epidemiology estimated that this scenario might lead to a reduction of about 11,400 emergency room treated injuries relative to the status quo. The benefits of this injury reduction, in terms of reducted injury costs, would amount to about $58,000,000. In addition, about 25,050 other medically attended injuries, treated outside of hospital emergency rooms, might be prevented, reducing injury costs by another $87,000,000. Total benefits will, therefore, be about $145,000,000. Injuries are lower in scenario B than in scenario A because more of the ATVs used by children are returned and transferred to older drivers.

Since the ATVs can be resold, the primary costs of the scenario would be the transaction costs. At $75 per vehicle, the costs of the refund would amount to about $56,250,000. Consequently, in this scenario the benefits are about $89 million more than the costs.

Scenario C: Recall with no resale of three-wheelers; 30 percent return.

In scenario C we assume that the recall applies to all three-wheeled ATVs, and four-wheeled ATVs used by children less than 16. We also assume that 30 percent of the ATVs will be returned, and that three-wheeled ATVs returned cannot be resold. This scenario is identical to A, except that the three-wheelers returned cannot be sold back to the public. About 520,000 ATVs would be returned under this scenario; 390,000 with three-wheels that would be taken out of use and replaced by four-wheelers.

Epidemiology has estimated that scenario C would reduce emergency room treated injuries by about 12,300, relative to the status quo. In addition, there might be another 18,475 other medically attended injuries prevented. The benefits of preventing these 30,750 injuries might be about $153,750,000.

The costs of scenario C include the transaction costs associated with the recall and reselling of the estimated 130,000 four-wheeled ATVs returned, plus the costs of recalling 390,000 three-wheeled ATVs which would have to be junked. The transaction costs on the ATVs which could be resold would be about $9,750,000. We do not know what the recall price to manufacturers would be, but (based on available "Blue Book" values) $750 may not be an unreasonable average, assuming that the average age of most three-wheeled ATVs returned would be about three or four years. Transaction costs associated with recalling ATVs that would be junked might add another $50 per ATV to the costs, for a total of about $800 per ATV returned. (If the ATVs have a positive scrap value the cost associated with taking them out of use would be reduced by that scrap value.) At $800 per ATV, the costs of recalling three-wheelers without resale, may be about $312,000,000. Thus the total costs of the recall might be about $321,750,000, as compared to benefits of about $153,750,000, for a net cost to society of about $158 million.

Scenario D: **Recall with no resale of three-wheelers; all three-wheelers driven by children will be returned, as well as 30 percent of the remaining three-wheelers and 30 percent of the four-wheelers driven by children.**

In scenario D we assume that all three-wheeled ATVs driven by children under 16 are returned, as well as 30 percent of other three-wheelers and 30 percent of four-wheeled ATVs driven by children. Scenario D is B, without the resale of three-wheeled ATVs returned. Under these assumptions, about 750,000 ATVs would be returned, of which about 620,000 would have three wheels and 130,000 would have four wheels.

Epidemiology has estimated that emergency room treated injuries would be reduced by about 33,900 under this scenario. In addition, there might be another 50,850 medically attended injuries treated outside of hospital emergency rooms that might be prevented. The benefits of preventing these injuries may amount to about $423,750,000.

The costs of D include the transaction costs associated with reselling the estimated 130,000 four-wheelers and the capital loss associated with taking the 620,000 three-wheelers out of use. The transaction costs would amount to about $9,750,000 and the costs of eliminating three-wheelers might amount to about $496,000,000. Thus, we may compare the benefits of about $423,750,000 to costs of about $505,750,000, for a net loss to society of about $80 million.

Scenario E: **Recall with resale; all ATVs used by children less than 16 are returned and resold for use by those over 16.**

In scenario E we assume that ATVs used by children less than 16 are returned under the recall. The ATVs can be resold, but not for use by children under 16. Although this scenario is unlikely, the outcome illustrates the extent to which young people sustain ATV injuries.

In this scenario, about 765,000 ATVs are returned. The transaction costs would therefore amount to about $57,375,000.

Epidemiology estimates a net reduction of about 19,100 emergency room treated injuries as a result of the recall. In addition, another 28,650 other medically attended injuries may be prevented because of the recall effort. The benefits of the reduced injuries would amount to about $238,750,000. Thus, benefits of $238,750,000 compared to costs of about $57,375,000 result in a net benefit to society of about $181 million.

Although the outcome described by this scenario is unlikely, it focuses on the magnitude of the hazard faced by children.

Conclusions

A table summarizing the cost and benefit comparisons is shown on the next page. Only in scenarios B and E are the estimated benefits greater than the costs of the recall. Both of these outcomes are probably unrealistic in the sense that they assume all ATVs driven by a single class of drivers would be returned. In B it is assumed that all three-wheelers used by children under 16 are returned, and in E it is assumed that all ATVs used by children are returned. However, these scenarios do show that a recall of ATVs that successfully targeted children could have a favorable economic impact.

Results are influenced by assumptions about the age distribution of users of ATVs after a recall, by estimates of what proportion of used ATV buyers may be inexperienced, and by estimates of the costs of the recall effort. If, for example, fewer children would ride ATVs after a recall effort, or buyers of used ATVs tend to be more experienced than we assume, the benefits would be greater. If, on the other hand, more children would ride the resold ATVs, or if buyers of used ATVs tend to be less experienced than assumed, then the benefits would be less. Similarly, estimates of the costs of the recall efforts affect the comparisons of costs and benefits.

Summary of Cost-Benefit Results[1]

Scenario	Total Costs	Total Benefits	Net Benefits (Costs)
A	$39,000,000	$-43,750,000	($82,750,000)
B	56,250,000	145,000,000	$88,750,000
C	321,750,000	153,750,000	($168,000,000)
D	505,750,000	423,750,000	($82,000,000)
E	57,375,000	238.750,000	$181,375,000

1. Scenario recap:

A. Recall with resale; 30 percent of all 3-wheeled vehicles and 30 percent of 4-wheeled ATVs used by those under 16 returned.

B. Recall with resale; all 3-wheeled vehicles driven by those under 16, 30 percent of remaining 3-wheeled vehicles, and 30 percent of 4-wheeled vehicles driven by children under 16 returned.

C. Recall with no resale of 3-wheelers, but resale of 4-wheelers; same return as A.

D. Recall with no resale of 3-wheelers, but resale of 4-wheelers; same return as B.

E. Recall with resale; all vehicles used by children under 16 returned, and resold for use by those over 16.

Source: Directorate for Economic Analysis, 1988.

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

Answers to Chairman Florio's Questions
Subcommittee on Commerce, Consumer Protection, and Competitiveness
Committee on Energy and Commerce

Submitted by
Carol G. Dawson, Commissioner

Question 1: In a memo dated August 13, 1987, the Commission's Director of Epidemiology wrote that "fully half the cases [of ATV deaths] involve collisions." The implication of this memo was clear - half the accidents were the fault of the rider, not the vehicle.

Yet, as the Commission's engineering expert, Mr. Deppa, correctly pointed out in a memo dated October 6, 1987, such a conclusion "seems equivalent to a report summarizing a major Government study on airline safety concluding that almost all airline deaths are due to impact."

Commissioners Dawson and Graham, what do you think of the Epidemiology memo and of Mr. Deppa's response?

Answer 1: As far as I am aware, this is the first time the memoranda of August 13 and October 6, 1987 have been shared with my office. As one who has studied the ATV issue in great depth, the memorandum from the Directorate for Epidemiology strikes me as a bit oversimplified. For example, handling and turning difficulties in ATVs might also have been a factor in the collision scenario. The memorandum from the Commission's engineering expert, Mr. Deppa, as usual, makes a great deal of sense.

Question 2: Do you agree that it is a matter of common sense that providing consumers an opportunity to return an unsafe product - and the resultant removal of the unsafe product from the marketplace - increases safety?

Answer 2: I certainly agree with the practice of affording a purchaser of an unsafe product an opportunity to return it. Such a practice is not only fair but takes unsafe products out of the market, thus increasing the level of safety for American consumers.

It is difficult to assess the extent to which a recall would be effective. The relative success of the Commission's recall efforts vary widely. There is an additional factor concerning ATVs which involves the trade in used products. These factors make it difficult to project with any precision the number of deaths and injuries which would be avoided should a refund be offered. Nonetheless, such an action would certainly underscore the safety message and would constitute an appropriate remedy for those who bought ATVs mistakenly believing ATV marketing that these vehicles are safe and fun for the entire family.

Question 3: I understand that some recent internal CPSC documents show that under certain assumptions, a refund option for ATVs is clearly justified, even by coldhearted cost benefit analysis, let alone by death and injury reductions.

Can you explain?

Do you have any comment on the assumptions made in those analyses?

Answer 3: As I stated in my response to question number two, it is extremely difficult to project accurately the reductions in injuries and deaths which would occur if a refund were to be offered. The assumptions made in the analysis can only be explained by those making them. Frankly, although the documents take an interesting approach, they certainly are not critical to the resolution of larger policy questions.

Question 4: On January 16, 1988 in the New Hampshire Business Review, the CPSC General Counsel was quoted as saying on the ATV recall issue, "We just don't have the engineering technology to prove that there is a defect in these vehicles which makes them dangerous. If such technology does come about in the future, we haven't given away the ability to institute that."

Do you think these statements could adversely impact on possible litigation if a final decree were not approved?

Was he speaking on behalf of the Commission?

On February 10, the General Counsel wrote a letter to the New York Times complaining that Polaris, the American ATV manufacturer, was seeking a marketing advantage when it offered to provide a trade-in credit for its three wheel ATVs, an offer in excess of anything offered by the other companies.

Was he writing on behalf of the Commission?

Was it appropriate for him to write such a letter as the General Counsel?

Answer 4: All throughout the consideration of the ATV matter, and certainly following the Commission's original December 12, 1986 decision, it has been my understanding that public disucssion of the merits of the case would be highly inappropriate. I have acted accordingly. The General Counsel's statements are unfortunate. He, of course, was expressing his opinion and should have made that clear. The Commissioners, not the General Counsel, make the policy decisions concerning product safety.

Specifically, the letter to the New York Times signed by Mr. Lacy was never authorized by the Commission. In fact, as the General Counsel knows, I advised him after reading it in the Times that I believed it to be inappropriate.

Question 5: Last June, the Chairman unilaterally removed two attorneys from the ATV litigation team, over your objections. The Chairman has continually claimed he was merely seeking more experienced attorneys.

Without implying any criticism of the current attorneys, wouldn't you agree that if indeed, the Chairman was really seeking to add experience to the legal team, the appropriate course of action would have been to add the attorneys to the existing team, and not replace the existing team?

Answer 5: This matter has received much attention, and of course the Chairman has repeatedly stated his view of the matter. I disagree with him. Clearly, at that time, the Commissioners were attempting to exercise their statutory authority to put some parameters and some controls on possible negotiations with industry. We were overruled. The attorneys were dropped. I regret that very much. Nonetheless, in spite of many administrative decisions such as this with which I disagree, I feel that the ultimate settlement as outlined in the final consent decree was an excellent one for the American consumer.

Question 6: Under the Commission's interpretation of section 15 of the Consumer Product Safety Act, how would you define a "defect"?

Answer 6: In my opinion, the term "defect" is a difficult one to define. It is a matter with which the Commission and the courts must wrestle from time to time. My understanding of the term "defect" involves any design, mechanical, or structural element in a product associated with a pattern of injuries. There have been circumstances in which engineers were unable to identify specific mechanical defects, when products, by their design, invited human error or misuse. This occurs especially when instructions or warnings are unclear. An illustrative incident occured involving a gas valve in which no specific defect could be found, but upon further research, it was discovered that the overall design proved frustrating to consumers. Consequently, when the valve failed, consumers would typically strike the product, causing further damage and often producing disastrous results.

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D C 20207

April 5, 1988

The Honorable James J. Florio
United States Representative
2162 RHOB
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Florio:

This responds to the questions for the record you submitted by letter dated March 22, 1988. I would like to take this opportunity to also express my appreciation to you for your continuing active interest in the Commission and in the ATV safety issue.

As you know, I have been a strong proponent of measures that would allow consumers to voluntarily return three-wheeled ATVs and adult-sized ATVs purchased for use by children under 16 years of age for a refund. Since the Final Decree adopted by the Commission (from which I dissented) does not contain this remedy, I believe immediate Congressional action on legislation such as H.R. 3991 is imperative.

If I can provide any assistance in this regard to you or to the Subcommittee, please do not hesitate to call me.

Sincerely,

Anne Graham
Commissioner

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

Answers to Chairman Florio's Questions
Subcommittee on Commerce, Consumer Protection, and Competitiveness
Committee on Energy and Commerce
Follow-up to ATV Hearing
March 16, 1988

Submitted by
Anne Graham, Commissioner

Question # 1

In a memo dated August 13, 1987, the Commission's Director of Epidemiology wrote that "fully half the cases (of ATV deaths) involve collisions." The implication of this memo was clear — half the accidents were the fault of the rider, not the vehicle.

Yet, as the Commission's engineering expert, Mr. Deppa, correctly pointed out in a memo dated October 6, 1987, such a conclusion "seems equivalent to a report summarizing a major Government study on airline safety concluding that almost all airline deaths are due to impact."

Commissioners Dawson and Graham, what do you think of the Epidemiology memo and of Mr. Deppa's response?

Chairman Scanlon, how do these misleading reports, such as the Epidemiology memo, get generated?

Answer to #1

In my view, one of the most troubling aspects of the Commission's involvement in the ATV issue has been an apparently calculated attempt to generate data designed to show that ATV injuries and deaths are either due to consumer misuse and not to any inherent properties of the vehicle or to show that the hazards presented by ATVs are no greater than those presented by other products. Rather than objectively collecting relevant data on the hazard issue, it appears that certain members of the CPSC staff have been directed to generate data to support these viewpoints. As a result, I believe that the Commission has publicly disseminated misleading data on ATVs. The August 13, 1987 memorandum written by the Director of Epidemiology is but one example.

Another, that readily comes to mind concerns the Director of Epidemiology's June 13, 1986 memorandum on the comparative safety of ATVs. This memorandum purported to statistically show that ATVs posed no greater hazard to consumers than other "similar" recreational vehicles.

A General Accounting Office investigation, requested by this Subcommittee, found that the reliability of the data used in the memorandum was of questionable value and was not statistically valid as it was based on unsubstantiated anecdotal information provided by a few witnesses at a CPSC public hearing.

A more recent example of what I believe to be a mischaracterization of data concerns the number of ATV injuries and deaths related to alcohol use. At the Subcommittee's hearing it was stated that 30% of the ATV deaths were caused by alcohol consumption. This statement was used to support the conclusion that a high number of deaths are due to consumer misuse. It is true that in about 30% of the ATV fatalities reported to the Commission alcohol was mentioned. This percentage alone is misleading, however, because it fails to mention that actual blood alcohol levels were not evaluated, and that no measure was made of the amount consumed, or how soon the accident occurred after the alcohol was consumed. Also, deaths reported to the Commission do not comprise a statistical sample. In the Commission's ATV hazard analysis, which was statistically representative, only about 14% of the drivers 16 years or older involved injury causing accidents (as opposed to fatalities) were reported to have consumed alcoholic beverages.

In sum, I agree with Mr. Deppa's characterization regarding the validity of the conclusions that can be drawn from the August 13, 1987 memorandum written by the AED for Epidemiology. Unfortunately, misleading memoranda on the nature and causes of ATV injuries and deaths have been consistently generated since the Commission became involved in ATV safety. Such practices are symptomatic of the point of view that certain individuals at the agency have brought to this issue. While I believe it is proper, and indeed healthy for a collegial body to openly debate issues and express differing viewpoints, I believe the public trust is betrayed when one side manipulates data towards its own ends.

Question #2

Do you agree that it is a matter of common sense that providing consumers an opportunity to return an unsafe product - and the resultant removal of the unsafe product from the marketplace -- increases safety?

Answer #2

Yes, I believe the safety-related benefits to be gained from a refund of three-wheeled ATVs and adult-sized ATVs purchased for use for children under 16 are incalculable. As I testified at the hearing, simple logic tells us that if an unsafe product is removed from the hands of a consumer through a refund, the likelihood of a consumer sustaining injury or death has been totally eliminated. It simply is not debatable that thousands of serious injuries and hundreds of deaths could be prevented if a refund remedy was implemented. The same cannot be said of remedies such as warnings, notice and even training where the possibility of injury or death, while reduced, still remains.

Critics of an ATV refund remedy have somewhat illogically argued that a refund is not safety related and could actually increase injuries and deaths. This argument appears to rest on the assumption that recalled ATVs would be resold to inexperienced consumers. I believe that product liability considerations make it unlikely that recalled ATVs will be resold by the manufacturers or the dealers to any consumers. Even if they were, if the provisions of the Final Decree are effective, they would not be resold to children under 16 years of age or to riders who do not take a training course.

Question #3

I understand that some recent internal CPSC documents show that under certain assumptions, a refund option for ATVs is clearly justified, even by cold-hearted cost benefit analysis, let alone by death and injury reductions.

Can you explain?

Do you have any comment on the assumptions made in those analyses?

Answer #3

For the first time since the Commission became involved in the ATV safety issue, the staff actually calculated the injury reduction that would occur if a refund remedy was implemented (See Attached). Five refund scenarios were hypothesized and the resultant injury reductions and costs estimated. Four of the five scenarios resulted in dramatic injury reductions and two of these (Options B & E) were also found to be cost beneficial. For example, if all three and four-wheeled ATVs used by children under 16 years of age were returned and resold to drivers 16 and over an estimated 19,100 emergency room treated injuries could be eliminated. In addition, another 28,650 medically attended injuries treated outside emergency rooms would be prevented for a total injury reduction of 47,750 injuries. A refund of this type would cost the manufacturers about $57,375,000, but would result in benefits of reduced injury costs of $238,750,000 for a net benefit to society of $181 million.

No one can predict with certainty the number of ATVs that would ultimately be returned if a refund were offered and consequently the ultimate number of injuries that could be prevented. This example illustrates, however, a critical point: that a refund targeted at the highest risk populations, such as children, will be effective from both an injury reduction and cost viewpoint. The key to an effective refund program is structuring it in such a way that those most at risk return their ATVs. Obviously, this can be done by ensuring that the notice accompanying the refund offer is targeted to the high risk groups. In this regard it should be noted that in estimating the injury reductions and costs associated with the five refund scenarios, a number of assumptions which may, or may not be true were made. Many of the scenarios assume a 30 percent return rate. Obviously, if more ATVs were returned more injuries would be eliminated. Similarly, the injury reductions estimated were based on a four year period rather than seven years which is the useful life of an ATV. Greater injury reductions would occur over a seven year period. The costs associated with a refund may also decrease if the injury reductions expected over a seven year period, and not four, had been used in the equation. Also, these figures do not take into account the number of deaths that could be prevented if children under 16 years of age were prohibited from riding ATVs. If these injury costs were calculated, it may well be that all five scenarios are cost effective.

Question #4

On January 16, 1988 in the New Hampshire Business Review, the CPSC General Counsel was quoted as saying on the ATV recall issue, "we just don't have the engineering technology to prove that there is a defect in these vehicles which makes them dangerous. If such technology does come about in the future, we haven't given away the ability to institute that."

Do you think these statements could adversely impact on possible litigation if a final decree were not approved?

Was he speaking on behalf of the Commission.

On February 10, 1988 the General Counsel wrote a letter to The New York Times complaining that Polaris, the American ATV manufacturers, was seeking a marketing advantage when if offered to provide a trade-in credit for its three wheel ATVs, an offer in excess of anything offered by the other companies.

Was he writing on behalf of the Commission?

Was it appropriate for him to write such a letter as the General Counsel?

Answer #4

On February 14, 1988 an article appeared in The Philadelphia Inquirer on ATVs in which the General Counsel is quoted as saying, "If we had ordered a recall with an uncertain outcome in court, we might have been faced with another quarter-million new injuries and 750 more deaths and no remedies in place."

On January 16, 1988 in the The New Hampshire Business Review, the General Counsel is quoted as saying on the ATV recall issue, "We just don't have the engineering technology to prove that there is a defect in these vehicles which makes them dangerous. If such technology does come about in the future, we haven't given away the ability to institute that."

On February 24, 1988 a letter to the editor appeared in The New York Times in which the General Counsel criticized the ATV testimony of a former Commissioner. This letter was sent without the knowledge or approval of the Commission. Even though some of the criticism of the former Commissioner's testimony was prefaced with the pronoun "I," the tone of the article in its entirety suggests that the General Counsel was attacking a former Commissioner in the name of the Commission as a whole. No where in the letter is a disclaimer made that the General Counsel is not representing the views of the Commission. Further, the letter to the editor gave the appearance that the Commission was more concerned with the alleged marketing advantage of Polaris rather than with safety. The letter made light of the fact that Polaris proposed to offer a trade-in credit for its 1,500 or so three wheeled models -- a safety offer which far exceeds any safety offer on the part of the foreign manufacturers.

The statements in these articles were made before presentation of the Final Consent Decree to the Commission and before it was clear that the ATV case would not be litigated. The statements, particularly regarding the lack of evidence as to a defect in ATVs, go to the heart of the controversy surrounding ATVs. If the case is litigated, the ATV industry could , and most likely would use the General Counsel's statements as evidence against the Government's case. Since the Commission is ultimately accountable for the ATV matter, I believe the Commission should have been consulted before these statements were publicly made.

The General Counsel's assertions in these various articles do not represent my views, and I have repeatedly objected to the misrepresentation of the Commission's views.

Question #5

Last June, the Chairman unilaterally removed two attorneys from the ATV litigation team, over your objections. The Chairman has continually claimed he was merely seeking more experienced attorneys.

Without implying any criticism of the current attorneys, wouldn't you agree that if indeed, the Chairman was really seeking to add experience to the legal team, the appropriate course of action would have been to add the attorneys to the existing team, and not replace the existing team?

Answer #5

I do not believe the real motivation behind the Chairman's removal of the two attorneys who headed the ATV litigation team was a desire to place more experienced attorneys on the team. As your question suggests, if this was his objective, the Chairman could have added attorneys to the team instead of removing them. The fact is that these two individuals were highly regarded senior staff who had more knowledge and experience on the complex factual and legal issues associated with ATVs than any other attorney in the agency. I have complete confidence in these attorneys' professionalism and continue to believe they were more than qualified to represent the Commission against any adversary.

The real reason for these attorneys replacement is suggested by the events preceding their removal by the Chairman on June 1, 1987. On May 20, 1987 the ATV industry had indicated a desire to initiate negotiation discussions to resolve the Section 12 imminent hazard case. On May 27th the Commission met and decided to authorize negotiations under certain specified conditions. One of these conditions was that the two attorneys heading the ATV litigation Task Force be designated the sole CPSC negotiating team reporting directly to the Commission. On May 28th a ballot vote implementing this decision was drafted and, as Commission procedures required, the General Counsel was requested to transmit the ballot to the Commission. The General Counsel refused to do so. Consequently, On May 29th on their own initiative, a majority of the Commission signed the ballot, thus constituting a binding Commission vote. On June 1st, the two attorneys were removed by the General Counsel, without explanation and in contravention of this Commission vote.

Given these facts, I can only conclude that these attorneys were removed because they were viewed as aggressively implementing the Commission majority's position on ATVs, a position which was contrary to that of the Chairman.

Question #6

Under the Commission's interpretation of Section 15 of the Consumer Product Safety Act, how would you define a "defect"?

Answer #6

Although the term "defect", and "design defect" is not defined in the statute, the legislative history indicates that the term is to be given a broad interpretation:

". . .Design defects are those which occur when a product is constructed according to a plan, without production error, but the plan itself results in a product which presents a risk to safety." (Senate Debate, Senator Eagleton 118 Cong. Rec. S9930, Daily Ed. June 21, 1972).

The Commission has interpreted the term "defect" broadly in its interpretative regulations. See 16 C.F.R. 1115.4. The regulation includes design defects, as well as defects caused by a lack of adequate warnings and instructions:

". . .At a minimum, defect includes the dictionary or commonly accepted meaning of the word. Thus, a defect is a fault, flaw or irregularity that causes weakness, failure, or inadequacy in form or function. A defect, for example, may be the result of a manufacturing or production error; that is, the consumer product as manufactured is not in the form intended by, or fails to perform in accordance with, its design. In addition, the design of, and the materials used in, a consumer product may also result in a defect. Thus, a product may contain a defect even if the product is manufactured exactly in accordance with its design and specifications, if the design presents a risk of injury to the public. A design defect may also be present if the risk of injury occurs as a result of the operation or use of the product or the failure of the product to operate as intended. A defect can also occur in a product's contents, construction, finish, packaging, warning and/or instructions. With respect to instructions, a consumer product may contain a defect if the instructions for assembly or use could allow the product, otherwise safely designed and manufactured, to present a risk of injury. . ."

"In determining whether the risk of injury associated with a product is the type of risk which will render the product defective, the Commission and staff will consider, as appropriate: The utility of the product involved; the nature of the risk of injury which the product presents; the necessity for the product; the population exposed to the product. ..the Commission's own experience and expertise; the case law interpreting Federal and State public health and safety statues, the case law in the area of products liability, and other factors relevant to the determination." [Emphasis added]. 16 C.F.R. 1115.4.

In the preamble to the Commission's 1978 interpretative regulations, the Commission reinforced the broad interpretation of "defect," under Section 15 with the statement that defect includes "the broadest meaning found in Federal and State statutes and judicial pronouncements." See, 43 Fed. Reg. 34991 (1978).

Given this legislative history, the interpretive regulation, and other definitions, there is no doubt in my mind that ATVs are inherently defective and that these defects need to be addressed by strong remedial action.

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND COMPETITIVENESS

Washington, DC 20515

March 22, 1988

Mr. Mark L. Gerchick, Esq.
Paul, Hastings, Janofsky and Walker
1050 Connecticut Ave., NW
Washington, D.C. 20006

Dear Mr. Gerchick:

Enclosed are questions for the record of the March 16, 1988 Subcommittee hearing on all-terrain vehicles. I would appreciate it if Kawasaki could respond by April 5, 1988.

Thank you for your cooperation.

Sincerely,

James J. Florio, Chairman
Subcommittee on Commerce,
Consumer Protection, and Competitiveness

JJF:chc
Enclosure

1. To what extent are ATVs sold in Japan? Please describe any and all legal restrictions, including licensing requirements, on the sale and/or use of ATVs in Japan.

2. Has your client taken any action against an ATV dealer for failing to provide appropriate safety information? If so, please describe.

3. For your client, please provide the number of 3-wheel ATVs repurchased from dealers (pursuant to the consent decree), the number currently in storage in the U.S., the number that have (since the preliminary consent decree) been removed from the U.S., and your plans for three wheelers currently in storage. For those three wheelers that have been removed from the U.S., please specify the destinations and the number exported to each destination.

Are there any restrictions on your exporting new three wheelers to a third country? Do you have any plans to do so?

Does your client or its parent company still manufacture three wheel ATVs? If so, in what countries are they distributed? If not, when did your client (or its parent company) actually stop production of new three-wheel ATVs?

4. I understand that during negotiations between the ATV industry and the CPSC, the industry suggested language which would make the consent decree null and void if Congress passed ATV legislation. I also understand the industry may have suggested that the CPSC should not testify in favor of ATV legislation at this hearing.

Please explain and please provide the Subcommittee with all documents relating to those proposals and suggestions.

5. On what television and radio networks and at what times of the day does the industry plan to purchase advertising time for its media safety awareness campaign?

When will the first advertisements appear?

LAW OFFICES OF
PAUL, HASTINGS, JANOFSKY & WALKER
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
TWELFTH FLOOR
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) [illegible]
CABLE ADDRESS PAULHAST WSH
TWX [illegible]

FOUNDERS
LEE G. PAUL
ROBERT P. HASTINGS
LEONARD S. JANOFSKY
CHARLES M. WALKER

LOS ANGELES OFFICE
TWENTY-SECOND FLOOR
[illegible] SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA [illegible]
TELEPHONE [illegible]

ORANGE COUNTY OFFICE
SEVENTEENTH FLOOR
[illegible] TOWN CENTER DRIVE
COSTA MESA, CALIFORNIA [illegible]
TELEPHONE [illegible]

WEST LOS ANGELES OFFICE
FIFTH FLOOR
[illegible] OCEAN AVENUE
SANTA MONICA, CALIFORNIA [illegible]
TELEPHONE [illegible]

ATLANTA OFFICE
FORTY-SECOND FLOOR
GEORGIA-PACIFIC CENTER
133 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30303
TELEPHONE (404) [illegible]

CONNECTICUT OFFICE
SECOND FLOOR
THREE LANDMARK SQUARE
STAMFORD, CONNECTICUT [illegible]
TELEPHONE (203) [illegible]

NEW YORK OFFICE
EIGHTH FLOOR
[illegible] PARK AVENUE
NEW YORK, NEW YORK [illegible]
TELEPHONE (212) [illegible]

April 5, 1988

OUR FILE NO.

James J. Florio, Chairman
Subcommittee on Commerce, Consumer
Protection and Competitiveness
U.S. House of Representatives
Room H2-151
House Annex No. 2
Washington, D.C. 20515

Dear Congressman Florio:

Thank you for your letter of March 22, 1988 providing questions for the record of the March 16, 1988 subcommittee hearing on all-terrain vehicles. The enclosed response is provided on behalf of Kawasaki Motors Corp., U.S.A. ("KMC") in response to your second question, which is company-specific. Responses to your first, fourth and fifth questions -- regarding matters not specific to any individual company -- are being provided separately on an industry basis. (Since your third question requests certain company-specific inventory information which is competitively and commercially sensitive, we have agreed with your staff to defer a response to that question pending consideration of possible confidential treatment for it.)

Thank you for your interest in this matter.

Yours very truly,

Mark L. Gerchick
of PAUL, HASTINGS, JANOFSKY & WALKER

Counsel for Kawasaki Motors Corp., U.S.A.

Enclosure

LAW OFFICES OF
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[illegible]

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ORANGE COUNTY OFFICE
SEVENTEENTH FLOOR
[illegible] TOWN CENTER DRIVE
COSTA MESA, CALIFORNIA [illegible]
TELEPHONE (714) [illegible]

WEST LOS ANGELES OFFICE
FIFTH FLOOR
[illegible] OCEAN AVENUE
SANTA MONICA, CALIFORNIA [illegible]
TELEPHONE (213) [illegible]

ATLANTA OFFICE
FORTY-SECOND FLOOR
GEORGIA-PACIFIC CENTER
133 PEACHTREE STREET, N. E.
ATLANTA, GEORGIA [illegible]
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NEW YORK, NEW YORK [illegible]
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April 26, 1988

OUR FILE NO.

BY HAND

James J. Florio, Chairman
Subcommittee on Commerce, Consumer
  Protection, and Competitiveness
U.S. House of Representatives
Room H2-151
House Annex II
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with conversations with your staff, provided herewith is Kawasaki Motors Corp., U.S.A.'s response to that aspect of question no. 3 of the Subcommittee's letter of March 22, 1988 that requests non-confidential information. We understand that this response provides information for the record of the March 16 hearing regarding all-terrain vehicles.

Thank you for your interest in this matter.

Yours very truly,

Mark L. Gerchick
of PAUL, HASTINGS, JANOFSKY & WALKER

Enclosure

QUESTION NO. 2

KMC is undertaking compliance with the Preliminary Consent Decree now in effect, including the best efforts obligation to ensure dealer compliance with the obligations to provide specified safety information. To date, KMC has not been provided with reports of any significant failures by its dealers to comply with the safety information dissemination undertakings of the Decree. In a single instance, a dealer who apparently had not received a safety alert poster was provided one for display. KMC believes that its actions in emphasizing to its dealer network the importance of compliance with the Decree have materially assisted in achieving a substantial level of dealer compliance overall. (It appears that CPSC's own field monitoring of ATV dealer compliance confirms a high degree of dealer compliance with the Preliminary Consent Decree.) KMC is nonetheless prepared to take such action as is appropriate and consistent with federal and state law in the event of substantial dealer compliance failures.

QUESTION NO. 3

Kawasaki three-wheel ATVs are not presently being manufactured, and the last three-wheel ATVs received by Kawasaki Motors Corp., U.S.A. ("KMC") were received in late October, 1986. As for sales from December 31, 1987 to the date of this response, KMC has removed from the United States two three-wheel vehicles, both of which were shipped to Belgium. KMC is presently implementing, and further proceeding to develop, plans for additional exports. The preliminary and final consent decrees, by their terms, address sales of ATVs within the United States and its territories, rather than sales abroad, and KMC is not aware of export restrictions.

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND COMPETITIVENESS

Washington, DC 20515

March 22, 1988

Mr. Harry W. Cladouhos, Esq.
Pettit & Martin
1800 Massachusetts Avenue, NW
Washington, D.C. 20036

Dear Mr. Cladouhos:

Enclosed are questions for the record of the March 16, 1988 Subcommittee hearing on all-terrain vehicles. I would appreciate it if Suzuki could respond by April 5, 1988.

Thank you for your cooperation.

Sincerely,

James J. Florio, Chairman
Subcommittee on Commerce,
Consumer Protection, and Competitiveness

JJF:rhr
Enclosure

1. To what extent are ATVs sold in Japan? Please describe any and all legal restrictions, including licensing requirements, on the sale and/or use of ATVs in Japan.

2. Has your client taken any action against an ATV dealer for failing to provide appropriate safety information? If so, please describe.

3. For your client, please provide the number of 3-wheel ATVs repurchased from dealers (pursuant to the consent decree), the number currently in storage in the U.S., the number that have (since the preliminary consent decree) been removed from the U.S., and your plans for three wheelers currently in storage. For those three wheelers that have been removed from the U.S., please specify the destinations and the number exported to each destination.

Are there any restrictions on your exporting new three wheelers to a third country? Do you have any plans to do so?

Does your client or its parent company still manufacture three wheel ATVs? If so, in what countries are they distributed? If not, when did your client (or its parent company) actually stop production of new three-wheel ATVs?

4. I understand that during negotiations between the ATV industry and the CPSC, the industry suggested language which would make the consent decree null and void if Congress passed ATV legislation. I also understand the industry may have suggested that the CPSC should not testify in favor of ATV legislation at this hearing.

Please explain and please provide the Subcommittee with all documents relating to those proposals and suggestions.

5. On what television and radio networks and at what times of the day does the industry plan to purchase advertising time for its media safety awareness campaign?

When will the first advertisements appear?

SAN FRANCISCO OFFICE
101 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA [illegible]

DALLAS OFFICE
TEXAS COMMERCE BANK TOWER [illegible]
DALLAS, TEXAS [illegible]

PETTIT & MARTIN
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEX [illegible]
TELECOPIER [illegible]
(202) 785-5153

LOS ANGELES OFFICE
355 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA [illegible]

SAN JOSE OFFICE
333 W. SANTA CLARA STREET
SAN JOSE, CALIFORNIA [illegible]

HARRY W. [illegible]

April 8, 1988

VIA HAND DELIVERY

The Honorable James J. Florio
United States House of Representatives
Washington, D.C. 20515

RE: Your Request of March 22, 1988

Dear Representative Florio:

This letter responds on behalf of American Suzuki Motor Corporation ("Suzuki") to the above-referenced request for information. A joint response on behalf of the four ATV major distributors to questions 1, 4 and 5 of your letter is attached hereto. The following, therefore, responds to questions 2 and 3 of your letter:

Question 2.

> Suzuki has no written policy regarding disciplining of dealerships. Such actions are taken on a case-by-case basis in accordance with the terms of the dealer agreement and applicable law. To date, we have not been made aware of instances in which specific dealers have failed to provide appropriate safety information to consumers.
>
> Suzuki intends to ensure that its dealers disseminate all appropriate safety information to customers in compliance with the preliminary and final consent decree. Suzuki field personnel have instructions to make sure every dealership prominently displays an ATV Safety Alert poster, and to continually stress to dealers the importance of complying with all of the requirements of the preliminary and final consent

decrees. Suzuki is also modifying its field staff reporting to better ensure compliance in the various regions of the country.

Question 3.

Suzuki entered the U.S. ATV market with 1983 model year three- and four-wheel ATVs. Suzuki was the last of the four major ATV companies to enter the three-wheel market, and the first company to market four-wheel ATVs. Suzuki's ATV marketing, therefore, has always been heavily oriented toward the four-wheel product line. For marketing reasons, Suzuki discontinued its very limited production of three-wheel ATVs after the 1986 model year.

Pursuant to your staff's oral agreement with Mark Gerchick of Paul, Hastings, Janofsky and Walker, information regarding the number of three-wheel ATVs repurchased and in inventory will be submitted upon agreement with your staff regarding confidential treatment of such information.

Sincerely,

Harry Cladouhos

Harry W. Cladouhos

Attachment

Joint Response of American Honda, Kawasaki, Suzuki, and Yamaha

Question 1

There are no restrictions on the sale or off-road use of ATVs in Japan. For a number of reasons, however, very few ATVs are sold in Japan. Off-road ride areas in Japan are small and there are few of them; there is therefore limited opportunity for recreational riding. Moreover, there is little utility use for ATVs on farms in Japan because many farms are terraced or are generally too small to make the use of an ATV attractive.

Question 4

The pending ATV legislation in Congress overlaps and/or conflicts in part with the provisions of the consent decree. If any such legislation is passed, the ATV distributors will be subject to conflicting or duplicative requirements and to obligations beyond those contemplated by the decree. The distributors were reluctant to sign a settlement in light of such pending legislation. In the interest of fairness and simplicity, the distributors suggested during negotiations that they should be subject to only one set of requirements; they therefore proposed that if such legislation were enacted, the consent decree should no longer be binding. Although the distributors urged the Commissioners to support the settlement they were negotiating, at no time did the distributors urge that the CPSC Commissioners should not testify before Congress about the wisdom of any pending legislation.

Question 5

The Media Plan for the Public Awareness Campaign, attached as Appendix N to the Final Consent Decree, describes the type of programming that the ATV distributors will be purchasing. Although radio programming is not part of the Media Plan, extensive network and spot television programming will be purchased. Specifically, only prime-time and sports programming will be purchased for the network television component of the Media Plan. For spot television (i.e., regional markets), 80% of the programming will be prime-time and sports programming and 20% will be news programming. Prime-time is defined in the industry generally as programming between 8:00 - 11:00 p.m. Final selection of specific programs cannot be made until actual airtime is purchased. The first advertisements will appear in October to allow for production time and to ensure adequate availability of appropriate media time.

[illegible]

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND COMPETITIVENESS

Washington, DC 20515

March 22, 1988

Mr. Matthew Schneider, Esq.
Willkie, Farr, & Gallagher
3 Lafayette Center
1155 21st St., NW
Sixth Floor
Washington, D.C. 20036-3302

Dear Mr. Schneider:

Enclosed are questions for the record of the March 16, 1988 Subcommittee hearing on all-terrain vehicles. I would appreciate it if Yamaha could respond by April 5, 1988.

Thank you for your cooperation.

Sincerely,

J J Florio

James J. Florio, Chairman
Subcommittee on Commerce,
Consumer Protection, and Competitiveness

JJF:rhr
Enclosure

1. To what extent are ATVs sold in Japan? Please describe any and all legal restrictions, including licensing requirements, on the sale and/or use of ATVs in Japan.

2. Has your client taken any action against an ATV dealer for failing to provide appropriate safety information? If so, please describe.

3. For your client, please provide the number of 3-wheel ATVs repurchased from dealers (pursuant to the consent decree), the number currently in storage in the U.S., the number that have (since the preliminary consent decree) been removed from the U.S., and your plans for three wheelers currently in storage. For those three wheelers that have been removed from the U.S., please specify the destinations and the number exported to each destination.

Are there any restrictions on your exporting new three wheelers to a third country? Do you have any plans to do so?

Does your client or its parent company still manufacture three wheel ATVs? If so, in what countries are they distributed? If not, when did your client (or its parent company) actually stop production of new three-wheel ATVs?

4. I understand that during negotiations between the ATV industry and the CPSC, the industry suggested language which would make the consent decree null and void if Congress passed ATV legislation. I also understand the industry may have suggested that the CPSC should not testify in favor of ATV legislation at this hearing.

Please explain and please provide the Subcommittee with all documents relating to those proposals and suggestions.

5. On what television and radio networks and at what times of the day does the industry plan to purchase advertising time for its media safety awareness campaign?

When will the first advertisements appear?

6. According to an article that was in the Washington Post in January:

> A spokesman for American Honda Motor Corp., which has been the leading ATV seller, however, cited a provision in the decree that allows renewed sales of the three-wheeled ATVs after the safety commission sets certain standards, and said their return is 'definitely a real possibility.'
>
> Kurt Antonius, the Honda spokesman, said his firm will store the 18,000 three-wheel models currently in dealer inventories in hopes of returning them to the market with government approval in several months.

A spokesman for Yamaha Motor Corp., another major importer of the off-the-road vehicles, described the court decree as a 'moratorium' and said his firm also hopes to have the three-wheel models back on sale after minor modifications.

How soon do you hope to return three-wheelers to the market? What modifications do you expect to make in three-wheel models?

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

April 19, 1988

The Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer
  Protection and Competitiveness
H2-151 House Office Building Annex II
Washington, D.C. 20515

Dear Chairman Florio:

This letter responds to your letter of March 22, 1988, requesting certain information from Yamaha Motor Corporation, U.S.A. I apologize for the delay in responding.

Since three of your questions requested identical information from Honda, Kawasaki, and Suzuki, a joint response was submitted by Honda on behalf of the four distributors on April 5, 1988.

Question #3 in part requested commercially sensitive information which Yamaha would submit provided that the Subcommittee is willing to agree to preserve the confidentiality of such information. We have discussed this matter with subcommittee counsel and he has indicated that the Subcommittee has taken our request under advisement. The answers to the remaining questions follow.

#2 - Since the entry of the preliminary consent decree Yamaha Motor Corporation, U.S.A. has adopted and implemented a dealer contact procedure to ensure compliance with its requirements. District personnel have contacted each dealer to verify compliance and answer questions. To ensure continued

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compliance, random unannounced visits by Yamaha Motor Corporation, U.S.A. staff are made. This has proved effective in producing compliance. In the event of non-compliance which cannot be remedied through these procedures, a determination will be made if appropriate dealer agreement termination activity can be taken consistent with applicable law.

#3 - There have been no exports of 3-wheeled ATVs since the preliminary consent decree. Yamaha knows of no export restrictions and has no current plan for the units currently in or anticipated to be in storage. (partial answer) Production information indicates that 3-wheeled ATVs have not been produced by Yamaha Motor Co. Ltd. since July 1986.

#6 - Yamaha has no current plan to modify its inventory of new and unsold 3-wheeled ATVs in order to return them to market. Any future sale of new and unsold 3-wheeled ATVs is contingent upon compliance with performance standards approved by the CPSC. Whether a completed standard would permit vehicles in inventory to be modified to meet its requirements cannot be determined at the present time.

Sincerely,

Matthew R. Schneider

[illegible]

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND COMPETITIVENESS

Washington, DC 20515

March 22, 1988

Ronald J. Greene, Esq.
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, D.C. 20037

Dear Mr. Greene:

Enclosed are questions for the record of the March 16, 1988 Subcommittee hearing on all-terrain vehicles. I would appreciate it if Honda could respond by April 5, 1988.

Thank you for your cooperation.

Sincerely,

J. J. Florio

James J. Florio, Chairman
Subcommittee on Commerce,
Consumer Protection, and Competitiveness

JJF:rhr
Enclosure

1. To what extent are ATVs sold in Japan? Please describe any and all legal restrictions, including licensing requirements, on the sale and/or use of ATVs in Japan.

2. Has your client taken any action against an ATV dealer for failing to provide appropriate safety information? If so, please describe.

3. For your client, please provide the number of 3-wheel ATVs repurchased from dealers (pursuant to the consent decree), the number currently in storage in the U.S., the number that have (since the preliminary consent decree) been removed from the U.S., and your plans for three wheelers currently in storage. For those three wheelers that have been removed from the U.S., please specify the destinations and the number exported to each destination.

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Please explain and please provide the Subcommittee with all documents relating to those proposals and suggestions.

5. On what television and radio networks and at what times of the day does the industry plan to purchase advertising time for its media safety awareness campaign?

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6. According to an article that was in the Washington Post in January:

> A spokesman for American Honda Motor Corp., which has been the leading ATV seller, however, cited a provision in the decree that allows renewed sales of the three-wheeled ATVs after the safety commission sets certain standards, and said their return is 'definitely a real possibility.'
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> A spokesman for Yamaha Motor Corp., another major importer of the off-the-road vehicles, described the court decree as a 'moratorium' and said his firm also hopes to have the three-wheel models back on sale after minor modifications.

How soon do you hope to return three-wheelers to the market? What modifications do you expect to make in three-wheel models?

7. In June, 1985, Anne Settle's son, Adam Gordon, was killed in an accident on a 1982 Honda 200E Big Red. Adam was eleven years old at the time.

At the time, Honda did not put warnings on its vehicles to warn that eleven year old children should not ride 200 cc ATVs and did not do so until the 1986 models.

Under the consent decree, Honda has agreed that children under 16 should not ride such large ATVs. Yet, in a deposition in a lawsuit, Honda claims "that children younger than 14 years may also be able to operate the vehicle properly."

Does Honda believe that children can ride 200 cc ATVs? Why did Honda fail to have such age labeling on ATVs before the 1986 models?

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April 5, 1988

The Honorable James J. Florio
U.S. House of Representatives
Member, Committee on Energy and
   Commerce
Room H2-151
House Office Building
Annex No. 2
Washington, D.C. 20515

Dear Congressman Florio:

This letter responds to your letter of March 22, 1988, requesting certain information from American Honda. Since three of your questions requested identical information from Yamaha, Kawasaki, and Suzuki, a joint response by the four companies is attached as Attachment 1. The answers to the remaining questions are attached as Attachment 2.

Sincerely yours,

Ronald J. Greene

Ronald J. Greene

Attachments

Attachment 1

Joint Response of American Honda, Kawasaki, Suzuki, and Yamaha

Question 1

There are no restrictions on the sale or off-road use of ATVs in Japan. For a number of reasons, however, very few ATVs are sold in Japan. Off-road ride areas in Japan are small and there are few of them; there is therefore limited opportunity for recreational riding. Moreover, there is little utility use for ATVs on farms in Japan because many farms are terraced or are generally too small to make the use of an ATV attractive.

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The pending ATV legislation in Congress overlaps and/or conflicts in part with the provisions of the consent decree. If any such legislation is passed, the ATV distributors will be subject to conflicting or duplicative requirements and to obligations beyond those contemplated by the decree. The distributors were reluctant to sign a settlement in light of such pending legislation. In the interest of fairness and simplicity, the distributors suggested during negotiations that they should be subject to only one set of requirements; they therefore proposed that if such legislation were enacted, the consent decree should no longer be binding. Although the distributors urged the Commissioners to support the settlement they were negotiating, at no time did the distributors urge that the CPSC Commissioners should not testify before Congress about the wisdom of any pending legislation.

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Attachment 2

Response of American Honda

Question 2

No violations of the obligation to provide safety information to purchasers have come to American Honda's attention since the date of the preliminary consent decree. If a dealer infraction were to be discovered, American Honda would follow its standard three-tier procedure for dealing with such matters. If a dealership is found to be in violation of any rules or contractual terms, for any reason, then the dealership principal is sent a written notice from the Zone Manager with regard to the infraction. The dealership is given the opportunity to respond, and the matter may further be discussed with the Honda sales representative. If any infraction continues following the first notification, then a second notification is sent from the American Honda corporate headquarters, with a copy to the Zone and District representatives. It is rarely necessary to go beyond this step, and most matters are resolved reasonably quickly.

If there is a continuing problem with the dealership, then the matter is turned over to the company's outside legal counsel, who will make direct contact with the dealership principals in order to advise the dealership of possible legal measures which may be taken against the dealership. These procedures are routinely followed for all dealer set-up and safety-related problems, or for any misrepresentations which may be made by the dealership which come to the attention of American Honda.

Question 3

As of March 30, 1988, approximately 14,382 three-wheel ATVs are listed in American Honda's inventory, of which 2,287 are units that have been returned from dealer inventory. Approximately 12,354 units are listed in dealer inventory. Of the units currently still listed in dealer inventory, American Honda has statements from 1646 dealers (out of approximately 1675 dealers) indicating that all units in these dealers' possession will be returned. The remaining 29 dealers are being contacted individually to stress the need to return any units in their possession. The units to be returned are being processed, which takes considerable time. American Honda's warehouse and distribution system is not designed to handle the receipt of assembled vehicles from dealers, and special procedures have had to be developed for dealing with this program. These procedures are designed to collect the units from dealers, send them to the district warehouses, disassemble the vehicles, and prepare them for shipping to the American Honda warehouse where they can be stored.

Page 2
Response of American Honda

No units have been removed from the United States and exported to other countries since the preliminary consent decree, nor does American Honda have any current plans to do so. American Honda does not know of any export restrictions. American Honda has not formulated its plans for units in storage.

Question 6

Honda has no plan to modify its inventory of three-wheel ATVs in order to return them to the market. Any such plan would require compliance with CPSC-approved standards, which do not now exist and which did not exist in January. At the end of January CPSC provided a partial draft of a proposed voluntary standard but, in view of its fragmentary nature, it is impossible to determine what past or current models of ATVs might meet its requirements. Until a standard is completed, Honda obviously could not return any three-wheel vehicles to the market. Whether a completed standard would permit vehicles in inventory to be modified to meet its requirements cannot be determined at the present time.

Question 7

Beginning in 1986, Honda began labeling its ATVs with age recommendations. At that time, all vehicles over 90cc were labeled with the recommended minimum age of 14. Honda took this action in order to be fully cooperative with the Consumer Product Safety Commission, even before a draft voluntary standard was produced.

Under the consent decree, the industry has agreed to recommend that children under 16 should not ride all-terrain vehicles with an engine displacement larger than 90cc. This agreement was one of the many compromises reached in order to settle the many different issues raised in the consent decree. As we stated in the decree, the ATV manufacturers "do not admit that ATVs are or have been unsafe or defective nor do they admit any liability for any accidents, injuries or deaths involving such vehicles. In addition, defendants do not admit any fault, wrongdoing or unlawful conduct with respect to any product or actions taken or any actions alleged in the Complaint, including, but not limited to the alleged making of false and deceptive representations and failing to provide adequate warnings and instructions."

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May 17, 1988

The Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer
 Protection, and Competitiveness
Committee on Energy and Commerce
House Office Building Annex No. 2
Washington, D.C.   20515

Dear Mr. Chairman:

In response to an informal request from Mr. Huberman of the Subcommittee's staff, I am supplying certain additional information to supplement the response of American Honda Motor Co., Inc., which was provided to you on April 5, 1988. Specifically, Mr. Huberman has asked for information pertaining to the the manufacture and distribution of three-wheel ATVs by American Honda or its parent company, Honda Motor Co., Ltd.

American Honda has never manufactured ATVs of any kind. Instead, as our previous responses have indicated, it distributes ATVs manufactured by Honda Motor Co., Ltd. Honda Motor Co., Ltd., stopped producing three-wheel ATVs on June 3, 1987.

During the period from January 1987 to date (the period covered by the most accessible records of shipments), Honda Motor Co., Ltd. shipped three-wheel ATVs to sixteen countries other than the United States. No country received more than 1,000 such ATVs. More than 100 three-wheel vehicles were shipped to each of the following countries during that period: Australia, Canada, France, New Zealand, Saudi Arabia, the United Arab Emirates, and the United Kingdom. Moreover, American Honda shipped approximately 1,400 three-wheel units to Mexico early this year.

We apologize for the omission of this information from our earlier response. If your staff has any further questions, they should contact me directly.

Sincerely yours,

Ronald J. Greene

Ronald J. Greene

HOWARD C. NIELSON
THIRD DISTRICT UTAH

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEES
TELECOMMUNICATIONS AND FINANCE
COMMERCE, CONSUMER PROTECTION
AND COMPETITIVENESS

COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE
GOVERNMENT ACTIVITIES AND TRANSPORTATION
VICE CHAIRMAN

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TRAVEL AND TOURISM CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

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REP. JAMES J. FLO
D.C. OFFICE

April 7, 1988

The Honorable Terrence Scanlon, Chairman
The Honorable Carol Dawson, Vice Chairman
The Honorable Anne Graham, Commissioner
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Ladies and Gentlemen:

I regret that I was not able to ask all the questions that I had prepared during the hearing that was held on March 16, 1988 in the Subcommittee on Commerce, Consumer Protection, and Competitiveness. I ask that you please respond to the following questions as soon as possible, so that your answers can be made part of that hearing record.

1. H.R. 3991 declares three-wheel, all-terrain vehicles to be "banned hazardous products" within the meaning of Section 8 of the Consumer Product Safety Act. What would be the effect of such a declaration, especially in light of the fact that the manufacturers of all-terrain vehicles have agreed to cease selling such vehicles in the United States?

2. Did the data developed by the ATV Task Force find that three-wheel, all-terrain vehicles were extraordinarily risky compared with other vehicles such as snowmobiles or trail bikes?

3. If the ATV Task Force did not consider data comparing the risks of all-terrain vehicles to the risks associated with vehicles such as snowmobiles or trail bikes, please explain why it did not consider such data?

4. Did the ATV Task Force recommend a ban on three-wheel all-terrain vehicles?

Thank you very much for your cooperation and assistance.

Sincerely,

Howard C. Nielson

HOWARD C. NIELSON
Member of Congress

HCN/mjf

cc: Honorable James Florio

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

April 14, 1988

The Chairman

The Honorable Howard C. Nielson
U. S. House of Representatives
Washington, DC 20515

Dear Congressman Nielson:

Enclosed are my personal responses to your four follow-up questions to the March 16, 1988 hearing before the Subcommittee on Commerce, Consumer Protection and Competitiveness on H.R. 3991, dealing with all-terrain vehicles.

Please let me know if I can be of any further assistance.

Sincerely,

Terrence Scanlon
Chairman

Enclosures

CHAIRMAN SCANLON'S ANSWERS TO
CONGRESSMAN NIELSON'S QUESTIONS
April 7, 1988

1. QUES: H.R. 3991 declares three-wheel, all-terrain vehicles to be "banned hazardous products" within the meaning of Section 8 of the Consumer Product Safety Act. What would be the effect of such a declaration, especially in light of the fact that the manufacturers of all-terrain vehicles have agreed to cease selling such vehicles in the United States?

ANS: Section 2(a) of H.R. 3991 would ban the future sale of new three-wheeled ATVs by manufacturers, distributors or dealers. Resale of used three-wheeled ATVs by private parties would be permitted.

Under terms of the Final Consent Decree (FCD), the ATV industry has agreed to cease marketing all new three-wheeled ATVs until such time as a mutually satisfactory performance standard has been worked out. Thus, Section 2(a) of H.R. 3991 would seem to preclude the possibility, however unlikely, of such a standard being developed for three-wheelers since three-wheeled ATVs would be permanently banned. Also, it might influence the outcome of product liability cases in the future.

The effect on those new three-wheelers currently in stock would seem to be minimal however, since, under the terms of the FCD, the industry is to make good faith efforts (including repurchase of existing inventories) to discourage their sale. Also, it should be noted that terms of the FCD will be enforceable in the federal courts.

2. QUES: Did the data developed by the ATV Task Force find that three-wheel, all-terrain vehicles were extraordinarily risky compared with other vehicles such as snowmobiles or trail bikes?

ANS: No. Such a suggestion was a part of the Advance Notice of Proposed Rulemaking (ANPR) the Commission issued on May 31, 1985 on ATVs. However, public hearing testimony on the use of ATVs and other recreational vehicles, painted a somewhat different picture which was then included, on a "Restricted" basis, in the ATV Task Force Report as Tab K.*

---

* NOTE: Additional comparative data was developed for me by the CPSC staff in preparation for the March 16, 1988 hearing on ATVs before the House Subcommittee on

Commerce, Consumer Protection and Competitiveness. Copies of that "Restricted" information, dated March 11, 1988, have already been provided to the Subcommittee pursuant to an earlier majority request for all staff documents prepared for that hearing.

3. QUES: If the ATV Task Force did not consider data comparing the risks of all-terrain vehicles to the risks associated with vehicles such as snowmobiles or trail bikes, please explain why is did not consider such data?

ANS: As your colleague, Rep. William E. Dannemeyer, indicated in a June 3, 1987 letter to Chairman Florio (copies of which were sent to all three CPSC Commissioners), this is not an easy question to answer. The evolution of this issue is, to say the least, confusing.

Reiterating my response to Question #2, the ATV Task Force did include some comparative data, on a "Restricted" basis, in Tab K of its September 30, 1986 report. However, in August 1985, a majority of the Commission voted not to conduct a more definitive consumer use survey of trailbikes, snowmobiles and ATVs as had been recommended by the ATV Task Force following realization that the comparative injury rates published in the May, 1985 ANPR had not been adjusted for vehicle usage and were, therefore, misleading. My feeling, and vote, was that this consumer use survey should have been conducted in order to set the record straight as soon as possible, but I was outvoted for reasons that can best be explained by the Commissioners who cast ballots contrary to mine.

4. QUES: Did the ATV Task Force recommend a ban on three-wheel all-terrain vehicles?

ANS: No. To the contrary, the Executive Summary of the September 30, 1986 Task Force Report states on p. 20:

> "At this time, the ATV Task Force cannot demonstrate that a consumer product safety standard is not feasible. Therefore, a ban of three-wheeled ATVs or encouraging states to ban the use of three-wheeled ATVs on public lands is inappropriate."

In addition, the Task Force noted (again on p. 20) that:

> "... manufacturers are producing and selling substantially more four-wheel ATVs than three-wheelers. The marketplace may be adjusting to the consumer demand for this feature."

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D C 20207

Answers to Congressman Nielson's Questions
Subcommittee on Commerce, Consumer Protection and Competitiveness

Submitted by
Carol G. Dawson, Commissioner

Question 1: H.R. 3991 declares three-wheel, all-terrain vehicles to be "banned hazardous products" within the meaning of Section 8 of the Consumer Product Safety Act. What would be the effect of such a declaration, especially in light of the fact that the manufacturers of all-terrain vehicles have agreed to cease selling such vehicles in the United States?

Answer 1: As you know, the final consent decree requires the manufacturers to stop selling all three-wheel all-terrain vehicles (ATVs) and to repurchase those in the hands of dealers. The final consent decree does not contain a permanent ban on the sale of three-wheel ATVs. The agreement allows for the possible future manufacture and distribution of a three-wheel ATV which must first satisfy the Commission that it would not pose an unreasonable risk of injury. The provision in H.R. 3991 to ban three-wheel ATVs would permanently preclude any future model of such a vehicle from being sold as well as prohibit ATV dealers (not legally bound by the final consent decree) from selling those already manufactured.

Question 2: Did the data developed by the ATV Task Force find that three-wheel all-terrain vehicles were extraordinarily risky compared with other vehicles such as snowmobiles or trail bikes?

Answer 2: Comparative data can be informative. However, such is the case only when the data is reliable and compares products which are of similar design and performance. The comparative data to which you refer fails to meet that criteria since ATVs, snowmobiles and trail bikes are totally different vehicles. Their only similarity seems to be that they can all be used for recreational purposes.

Question 3: If the ATV Task Force did not consider data comparing the risks of all-terrain vehicles to the risks associated with vehicles such as snowmobiles or trail bikes, please explain why it did not consider such data?

Answer 3: The ATV Task Force, and ultimately the Commission itself, considered all relevant data in its examination of the hazards of all-terrain vehicles. Perhaps no other product subject to the Commission's jurisdiction has received such extensive research and study. The Commission, quite early in its activities, considered, but rejected, a proposal to embark on a costly and time-consuming comparison survey including the other vehicles you mention. The Commission made a determination not to pursue such a survey for several reasons. First, there was no legal requirement under the statute to do so. If there were, agency resources (taxpayer dollars) would be expended for such comparative surveys each and every time it considered strong action with regard to a particular product. Secondly, the estimated cost of doing such a survey was admittedly high -- several times as much as the survey on the use of ATVs alone and would have taken many more months to complete. Third, the results of such a survey would be of little use in the regulatory process, since the differences between the three vehicles in question are so great, in terms of design and performance, that the data would lack real meaning. In the General Motors X-car case, for example, the comparisons allegedly lacking were those with other automobiles of a similar construction and design, not simply of other motorized vehicles.

In spite of the Commission's decision, CPSC staff, apparently at the direction of the Executive Director, attempted to prepare documents purporting to make such comparative analysis in 1986. Since the analysis was based only on anecdotal information and lacked substance, the Commission determined that the resulting documents were not reliable, and did not meet the statutory requirement that information disseminated by the agency be accurate and not misleading. Subsequently, the Commission decided to release the documents, when requested under the Freedom of Information Act (FOIA), only when accompanied by a Commission statement of disclaimer and other relevant documents which put the staff analysis in its proper perspective. (See attached document).

Notwithstanding these precautions, the comparative analysis later appeared in print without the disclaimer as if it were an accurate CPSC analysis based on substantive studies. It is regrettable that data from government agencies can be misrepresented in such a manner.

It should be noted that nearly every manufacturer of a consumer product which has been subject to Commission enforcement action attempts to prove that its product is no more risky than similar products. The mandate of the Commission is to use its authority to protect consumers from unreasonable risks of injury from consumer products--not unreasonable compared to every other product. Once we start down such a path, there is no end to the kind of comparisons which might be made. The fact that there have been 900 deaths and over 300,000 injuries related to the use of these vehicles provided ample evidence for the Commission to act.

Question 4: Did the ATV Task Force recommend a ban on three-wheel all-terrain vehicles?

Answer 4: No.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

COMMISSION DECISION ON ATV FOIA REQUEST
OCTOBER 14, 1986

On June 13, 1986, the Associate Executive Director for Epidemiology prepared a memorandum comparing the frequency of use of ATVs with that of trailbikes and snowmobiles. The memorandum contains several charts purporting to show comparisons for such use. On that same date, the Directorate for Economics prepared another memorandum that estimated the costs of ATV-related injuries. This second memorandum relies on and incorporates the charts and conclusions of the first document.

The Office of General Counsel then raised a number of questions about the accuracy of both memoranda by way of a June 23, 1986 memorandum. The AED for Economics and the AED for Epidemiology responded to the OGC inquiry in memoranda dated June 30 and July 15 respectively.

Despite these replies by the two directorates to the OGC inquiries, questions remain about whether the memoranda in question are inaccurate and/or misleading. Section 6(b)(6) of the Consumer Product Safety Act requires the Commission to ensure that publicly-disclosed information reflecting on the safety of a consumer product or a class of products be accurate and not misleading.

In September of 1985, the Commission specifically voted against conducting a survey, proposed by the AED for Epidemiology, to compare the use of ATVs with that of other recreational vehicles. The Commission was advised that such a comparison is not legally required to support a rulemaking proceeding under the CPSA. Furthermore, the Commission felt that studies of other vehicles were irrelevant to an inquiry about ATVs, might mislead the public, and would needlessly divert scarce agency resources.

Nonetheless, in a June 13, 1986 memorandum, the AED for Epidemiology compared the frequency of ATV use with that of trailbikes and snowmobiles. The memorandum bases its conclusions on the testimony of four ATV dealers and three ATV users who testified at the Commission's nationwide ATV hearings. A review of that testimony shows that six of the witnesses provided off-the-cuff guesses in response to questions about how often ATVs were used in comparison to other off-road vehicles. In virtually every case, the witnesses made clear that their answers were rough guesses, and in every case but one the witnesses provided no data to substantiate their opinions. Despite this lack of data, however, the June 13 memorandum from Epidemiology includes charts and graphs developed from that testimony, which may give the appearance that the information provided by the witnesses is factually accurate.

In view of the lack of factual support for its charts and data, the Commission believes that the Epidemiology memorandum of June 13 may be misleading. It could lead a reasonable reader to conclude that the information is credible when, in fact, it may not be. This conclusion is enhanced, in part, by the June 13 memorandum from the Directorate for Economics, since that document uses and relies on the Epidemiology information to assign cost figures to injuries associated with ATVs, trail bikes and snowmobiles. Regrettably, the Economics memorandum also fails to indicate the tenuous nature of the data on which its conclusions are based and thus may also mislead the reader.

Although the AEDs for Epidemiology and for Economics responded to the concerns raised by OGC, their replies do not address the problems associated with the sources and nature of the original underlying data.

The Commission has therefore determined that both the memoranda may be misleading and thus, under the requirements of Section 6(b)(6) of the Consumer Product Safety Act, should not be affirmatively disseminated.

However, the Commission has before it a Freedom of Information Act request for the June 13 Epidemiology memorandum. We believe that the Commission should be committed to conducting its business in public to the fullest extent permitted by law. The Commission therefore determines that the June 13 Epidemiology memorandum should be disclosed in response to FOIA requests, so long as it is accompanied by copies of this statement, the June 13 Economics memorandum, the June 23 OGC memorandum, the June 30 and July 15 memoranda responding to OGC, and the transcript of the witness' testimony upon which the Epidemiology memorandum is based. This additional information will help place the Epidemiology AED's June 13 memorandum in its proper perspective.

Moreover, in order for FOIA requesters to understand the context in which all of these memoranda should be placed, the Commission determines that FOIA requests for any of the above memoranda must receive this entire package of information.

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10.14.86

Carol G. Dawson

10-14-86

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

April 15, 1988

The Honorable Howard C. Nielson
United States House of Representatives
1229 LHOB
Washington, D.C. 2015

Dear Congressman Nielson:

This responds to the questions for the record you submitted by letter dated April 7, 1988. I would also like to take this opportunity to express my appreciation for your continuing interest in the Commission.

If I can be of any further assistance to you on this or any other matter, please do not hesitate to contact me.

Sincerely,

Anne Graham
Commissioner

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Response to Congressman Nielson's Questions

by

Anne Graham, Commissioner

April 15,1988

Question #1

H.R. 3991 declares three-wheel, all-terrain vehicles to be "banned hazardous products" within the meaning of Section 8 of the Consumer Product Safety Act. What would be the effect of such a declaration, especially in light of the fact that the manufacturers of all-terrain vehicles have agreed to cease selling such vehicles in the United States?

Answer #1

The provisions of the Final Consent Decree are in effect for ten years. After ten years the distributors would not be legally prohibited from re-introducing three-wheeled ATVs into the American market. A ban of these vehicles under Section 8 of the CPSA will ensure that three-wheelers remain off the market after the terms of the consent decree expire. Also, the Final Consent Decree does not bind the ATV dealers, only the distributors. A ban, on the other hand, could extend to retailers, in this case the ATV dealers. Therefore, a ban would provide further assurance that three-wheeled ATVs would not be sold by the distributors or the dealers.

Finally, the sanctions that can be imposed for violating a ban are different than those that can be pursued under the Final Consent Decree. Violation of a ban is a prohibited act under section 19 of the CPSA, subjecting the violator to an injunction or seizure action and to the imposition of civil or criminal penalties. Under the decree, the only sanction available for violation of its provisions is the institution of a contempt proceeding.

Question #2

Did the data developed by the ATV Task Force find that three-wheel all-terrain vehicles were extraordinarily risky compared with other vehicles such as snowmobiles or trail bikes?

Answer #2

A June 13, 1986 memorandum by the Director of Epidemiology on the comparative safety of ATVs, snowmobiles and trail bikes purported to statistically show that ATVs posed no greater risk than these other recreational products. A General Accounting Office investigation, requested by this Subcommittee, found that the reliability of the data used in the memorandum was of questionable value and was not statistically valid as it was based on unsubstantiated anecdotal information provided by a few witnesses at the CPSC ATV public hearings.

It should be noted that the Commission's statutes do not require it to determine the comparative safety of products to institute regulatory or legal action. For example, if the Commission finds that a given toy presents an unreasonable risk of injury it can initiate regulatory action even though there may be other toys that are equally as hazardous.

Question #3

If the ATV Task Force did not consider data comparing the risks of all-terrain vehicles to the risks associated with vehicles such as snowmobiles or trail bikes, please explain why it did not consider such data?

Answer #3

Please see the answer to question #2 above.

Question #4

Did the ATV Task Force recommend a ban on three-wheel all-terrain vehicles?

Answer #4

The ATV Task Force recommendations, which were based on data available as of September 1986, were contained in the Task Force report, a copy of which is attached for your information. I should note that the Task Force was not in a position to make sound recommendations on possible legal remedies. For those recommendations I relied on the expertise of the Commission's attorneys.

Attachment

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

SEP 30 1986

TO: The Commission
THROUGH: Sadye Dunn, Office of the Secretary S Dunn
THROUGH: John P. Mackey, Acting General Counsel JPm
THROUGH: Leonard DeFiore, Executive Director LDF

FROM: Nick Marchica, Chairman, All-Terrain Vehicle (ATV) Task Force NVM

SUBJECT: Report of the ATV Task Force

Attached is the report of the ATV Task Force on regulatory options for ATVs. This report contains the major findings, responses and recommendations of the ATV Task Force. In addition, a technical package has been forwarded to the Office of the Secretary containing additional, supporting information. A RESTRICTED briefing package on enforcement options will also be forwarded to the Commission prior to the October 15, 1986 briefing.

I would like to thank the members of the ATV Task Force for their efforts in the preparation of this report and the technical package. Their dedication to the project ensured that these materials were delivered to the Commission on schedule.

Attachment

NOTE: This document has not been
reviewed or accepted by the Commission.
Initial ______ Date 9/30/86

CPSA 6 (b)(1) Cleared
5/30/[illegible]

REPORT OF THE CPSC ALL-TERRAIN VEHICLE (ATV) TASK FORCE: REGULATORY OPTIONS FOR ALL-TERRAIN VEHICLES

EXECUTIVE SUMMARY

On April 3, 1985, the Consumer Product Safety Commission, in response to reports of numerous injuries and deaths associated with ATVs, established an ATV Task Force made up of Commission staff representing a broad range of technical disciplines. The Task Force was directed to carry out (1) technical analyses of ATVs, (2) monitor ATV industry activities to address potential hazards, (3) conduct public hearings on ATVs and (4) report to the Commission by September 30, 1986.

The major findings resulting from the ATV Task Force's work are listed below:

1. Typically, children under twelve (12) years of age are unable to operate any size ATV safely. This is because they lack adequate physical size and strength, cognitive abilities, motor skills and perception.

2. Children under sixteen (16) years of age are at greater risk of injury and death than adults when operating adult-size ATVs. This is due to poor judgment and failure to recognize and operate ATVs within their skill levels.

3. The risk of injury declines significantly with ATV riding experience.

4. Thirty percent (30%) of all fatal ATV accidents were associated with alcohol use. Fourteen percent (14%) of all reported accidents with injuries referenced alcohol consumption by the operator.

5. Thirty-one percent (31%) of the ATVs involved in accidents were carrying passengers.

6. Well-constructed, well-fitted helmets could substantially reduce the number of fatal head injuries to ATV operators.

7. Seventy-four percent (74%) of three-wheeled ATV accidents involved tipping or overturning compared to fifty-nine percent (59%) for four-wheeled ATV accidents.

8. The dynamic stability of four-wheeled ATVs is better than that of three-wheeled ATVs.

9. The handling performance of an ATV is strongly influenced by its suspension system; a properly tuned mechanical suspension for front and rear wheels is better than front-only or tire-only suspended ATVs.

10. The majority of state governments have no laws regulating the use of ATVs. Where these laws do exist, they are not uniform from state to state.

11. The current draft industry voluntary standard is inadequate in addressing the risks of injuries related to ATVs.

In response to these findings, the ATV Task Force recommends the following:

1. Request the ATV industry to voluntarily cease marketing ATVs intended for use by children under the age of twelve (12). If unsuccessful, the Commission should then move to ban All-Terrain Vehicles from the marketplace that are intended for use by children under the age of twelve (12).

2. Issue a Notice of Proposed Rulemaking for a warning label standard for the current ATVs intended for use by children under the age of fourteen (14). This standard would require labeling stating that these ATVs are not recommended for use by children under twelve (12) because of their lack of maturity and good judgment.

3. Issue a Notice of Proposed Rulemaking for a warning label standard for adult-size ATVs. This standard would require labeling stating that these ATVs are not recommended for use by children under sixteen (16) because they are at a greater risk of injury and death than adults due to deficiencies in judgment and failure to recognize and operate within their skill levels.

4. Issue a Notice of Proposed Rulemaking for a warning label standard for ATVs. This standard would require labeling stating that ATVs have unique handling qualities and that "hands-on" training of the operator is necessary to reduce the risk of injury and death.

5. Disseminate to the public the comparative safety information developed by the ATV Task Force. This information would describe the relative safety among ATV models.

6. Direct the Commission staff to carry out technical work necessary to support issuance of one or more Notice(s) of Proposed Rulemaking to address the performance characteristics of adult-size ATVs.

7. Intervene in the development of the ATV voluntary standard by formally requesting that CPSC staff comments be incorporated into the first phase of the voluntary standard.

8. Direct the Commission staff to fully participate in the development of performance requirements for the second phase of the voluntary standard.

9. Direct the Commission staff to develop a strong information and education campaign in Fiscal Year 1987. The I&E campaign would focus on the facts that: children should only operate ATVs intended for them and

not adult-size ATVs; ATV operator training is a necessity; ATVs are to be ridden by one person only; and wearing a helmet while riding an ATV saves lives.

10. Direct the Commission staff to develop point-of-sale information in cooperation with the ATV industry. Topics included in this information would be: minimum ATV operator age recommendations, the need for ATV operator training, the need to wear helmets while riding ATVs, the unique handling qualities of ATVs, and the differences between risks associated with ATVs used for recreation and those for utility purposes.

11. Direct the Commission staff to work with the states and other Federal agencies to encourage the development of practical, technically sound and uniform state legislation and appropriate Federal regulations for operation of ATVs on public lands. Topics to be included are: minimum ATV operator age recommendations, developing a licensing or certification system to require hands-on training for ATV operators, helmet requirements for ATV operators, prohibitions against riding with passengers on ATVs, limiting ATV operation on paved roads, and prohibiting the use of alcohol and controlled substances while operating ATVs. Appropriate sanctions that include but are not limited to fines, restitution for damages, loss of operator's license, impoundment of the vehicle, loss of vehicle registration, referral to perform a community service, and mandatory referral to and successful completion of an alcohol/drug abuse safe-driving program should be considered for inclusion in this legislation.

REPORT OF THE ALL-TERRAIN VEHICLE TASK FORCE:

REGULATORY OPTIONS FOR ALL-TERRAIN VEHICLES

BACKGROUND

The Consumer Product Safety Commission has preliminarily determined that there may be an unreasonable risk of injury associated with the use of All-Terrain Vehicles (ATVs). On April 3, 1985, the Commission voted to commence a rulemaking proceeding by issuing an Advance Notice of Proposed Rulemaking.

The Product

An All-Terrain Vehicle (ATV) is a motorized, off-road vehicle designed to travel on three or four low-pressure tires. It has a seat designed to be straddled by the operator and handlebars. The ATV is intended for use by a single operator.

The ATV market in the United States expanded rapidly in the early 1980's. During 1984, for example, ATVs accounted for almost half of the total motorcycle-type sales revenue. Recreational use has been and continues to be the focus of the market, but a number of models have been developed for "utility" applications, as well as for racing. At the end of 1985, there were an estimated 2.1 million ATVs in use. Currently, there may be 2.3 million ATVs in use.

There are two major market trends worth noting (Tab A). First, after several years of rapid growth, annual sales have begun to decline. Second, there is a strong trend toward four-wheeled ATVs. In 1985 and 1986 shipments of four-wheeled ATVs increased substantially.

Advance Notice of Proposed Rulemaking (ANPR)

On May 31, 1985 the Commission published an Advance Notice of Proposed Rulemaking in the Federal Register (Tab B). In the ANPR the Commission stated it had not decided which, if any, regulatory option it might elect to take to address the risks of injury associated with ATVs. Statutory alternatives under the Consumer Product Safety Act and the Federal Hazardous Substances Act, as well as non-regulatory alternatives, were also discussed in the ANPR. Finally, the Commission specifically invited members of the public to comment on fifteen(15) issues, including inviting a submission of a statement of intention to develop a voluntary safety standard or to modify an existing standard that addresses the risk of injury associated with ATVs, along with a plan to do so.

There were 2,994 comments received in response to the ANPR. A summary of the comments is provided at Tab C. There were 2,952 submittals reflecting the views of 4,435 consumers. Almost all of these comments were opposed to the ban or recall of ATVs. Many of the consumer commenters, in particular, expressed the belief that ATVs were being misused by "ignorant" riders who do not know how to ride and do not wear safety equipment. Because of this, these commenters took the position that they should not be penalized by a Commission ban or recall denying them the use of ATVs. Proper training and the use of safety equipment were stressed by the consumer commenters as important for ATV safety.

The Action Plan

On April 3, 1985, the Commission established an ATV Task Force made up of CPSC staff representing a broad range of technical disciplines. The Task Force was directed to carry out the following six (6) actions:

1. Conduct investigative surveys of ATV injuries and consumer exposure (Tab D) to obtain detailed information on ATVs. A Hazard Analysis (Tab E) and a report on factors affecting the likelihood of ATV accidents (Tab F) were to be prepared from this information.

2. Conduct engineering (Tab G), human factors (Tab H), and medical analyses (Tab I) of the hazards associated with ATVs and their use.

3. Monitor the development of any voluntary standards for ATVs, pending review of future data and industry activity.

4. Share information with ATV user groups and state, local, and federal government officials.

5. Monitor the ATV industry's education and training effort, reserving the right to assist or supplement the industry effort with Commission activities.

6. Conduct public hearings to obtain safety - related information on ATVs.

The Commission held a total of six(6) public hearings at the following locations and dates:

(1) Jackson, Mississippi (5/30/85)
(2) Dallas, Texas (6/17/85)
(3) Concord, New Hampshire (7/25/85)
(4) Milwaukee, Wisconsin (9/30/85)
(5) Los Angeles, California (10/17/85)
(6) Anchorage, Alaska (3/25/86).

The hearings were well attended and 285 witnesses testified. Issues discussed by the witnesses are provided at Tab J of this package.

ATV-RELATED DEATHS AND INNURIES:

As of July 31, 1986, the Commission had reports of 559 ATV-related deaths which occurred between 1982 and 1986. The table below lists the reported deaths by year.

Year	Number of Reported ATV Deaths (7/31/86)
1986 (data currently incomplete)	77
1985	238
1984	137
1983	81
1982	26
Total	559

During the first six months of 1986, there were an estimated 44,600 ATV-related injuries treated in hospital emergency rooms nationwide. This estimate is about the same as that for the first six months of 1985. The annual estimated number of ATV-related injuries treated in hospital emergency rooms nationwide has leveled off. CPSC staff estimates that the figure for 1986 will be similar to that of 1985 (85,900) although the estimated number of vehicles in use in 1986 is greater than the number of vehicles in use in 1985. This is an encouraging development in the staff's opinion. The table below lists the annual estimates.

Year	Injuries Treated in Hospital Emergency Rooms
1986*	53,900*
1985	85,900
1984	63,900
1983	26,900
1982	8,600

*For the period January 1, 1986 to July 31, 1986

Preliminary estimates of the costs of ATV-related injuries and deaths are at Tab K.

ATV INJURIES: INTERACTION OF THE RIDER, THE ATV AND THE ENVIRONMENT:

To put the findings in proper context, it should be noted that in a typical month there are approximately 7,000 injuries to ATV riders. The statistical analysis is based on the (1985 equivalent of the) 4.25 million drivers in households which own ATVs. However, the exposed population is much greater than this: data from the exposure survey indicate that a minimum of 2.5 million borrowers have driven ATVs and perhaps 1.5 million persons have ridden as passengers in a typical month. We do not know how many of these borrowers or passengers may also own ATVs and so be counted in the 4.25 million. It seems reasonable that the 7,000 injuries are from an exposed population of perhaps as many as 7,000,000. In a multiple regression analysis carried out by the Commission's Directorate for Economic Analysis (EC), both injuries and exposure were based on operators in ATV-owning households because of data limitations. 1/ In addition, there has been an average of approximately 20 deaths per month based on the staff's 1985 data.

Accidents involve interactions among riders, ATVs, and the environment. While the staff believes that many of these accidents are the result of foreseeable misuse by ATV operators, there are two separate, identifiable ways in which rider characteristics can affect the chance of accidents. First, some riders may be less able than others to handle ATVs in normal driving situations, so that accidents are more likely. The Commission's Directorate for Engineering Sciences (ES) has determined that handling characteristics of ATVs, more particularly three-wheeled models, are unique and complex. Second, some riders may take greater risks than others, so that, again, accidents become more likely. ATV characteristics can interact with each of these rider patterns, and the nature of the interaction will depend on the environment. The data clearly show all of these relationships. ATV rider characteristics will be discussed first, then an indication will be provided on ways in which the machine interacts with these rider characteristics, and, finally, the way in which the environment affects these interactions will be discussed.

ATV Rider Characteristics

Some riders are less able than others to physically or mentally control ATVs. This is most clearly true for young riders. The CPSC Human Factors staff work has found that body size and motor abilities are insufficiently developed (along with cognitive and perceptual abilities) to permit safe ATV operation by children under 12 years of age. Children below the age of six years are physically too small and insufficiently coordinated to operate even the smallest ATVs safely. Between the ages of 6 and 11 years, while physically capable of handling the small (50 & 60cc engine displacement) ATV models, children still lack the cognitive and perceptual abilities to do so safely. Their

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1/ Multiple regression analysis is a technique that can be used to determine the impact of each of several factors simultaneously. That is, the technique statistically "holds constant" each factor in turn, making it possible to study the independent effects of each of the factors. For example, we may want to determine if young drivers have more accidents, but we may know that such drivers, in addition to being young, usually spend more time driving and drive smaller machines. Multiple regression enables us to analyze the effect of each of these factors separately, holding the others constant. In interpreting the results (or indeed, the results of any statistical analysis), it is important to remember that statistical relationships do not imply causality. This technique enables one to explore some possible causal relationships, but uncertainty necessarily remains.

motor abilities at this age range still tend to be erratic and slower than desirable. According to the medical review of 284 in-depth investigations, cognitive development in small children is inadequate to make reasoned judgments, visual perceptions are immature and reaction times are prolonged accordingly. The Medical Director states that adequate maturity and judgment are not inherent in children, pre-adolescents, or even teenagers necessarily.

A hazard analysis carried out by the Commission's Directorate for Epidemiology (EP) shows that all drivers under 16 years of age have a relatively high risk of injury on ATVs with engines of 90cc displacement or greater. These are classified by industry as adult-sized ATVs. There was a greater risk of injury to children under 12 operating adult-size ATVs, e.g., 60% greater for ATVs of 90-125cc and 260% greater for ATVs of 160-185cc. According to the Medical Director, a large portion of this excess risk can be attributed to behavioral immaturity. Both the Human Factors work and the medical work indicate that young operators may lack the physical and judgmental abilities to control ATVs. However, it should be noted that children on small ATVs were at relatively lower risk than children on larger ATVs. The EC multiple regression analysis results provide a quantitative measure of the same results. For example, for a 200cc engine size ATV with three wheels, an experienced 10 year old male rider has a 4.6% chance of an accident within a year; for the same factors, a 40-year-old male rider has a 2.2% chance, less than half as great.[2/] Similarly, lack of experience raises the probability of an accident from 4.6% to 16.6% for 10-year-old children, almost a four-fold increase. The medical examination of a non-statistical sample of accident victims (including both adults and children) finds similar results: poor judgment was noted in 31% of the fatal accident cases, and insufficient proficiency in 22%.

The other way in which operator characteristics can affect accident probability is through people's risk taking propensities. CPSC staff does not have a direct measure of these tendencies. Investigations have revealed evidence of a relationship between poor judgment among adults riding ATVs and ATV injuries. This is in addition to the relationship between development and judgment in children riding ATVs. For example, adult ATV operators exhibit poor judgment when they:

- carry passengers;
- ride after drinking alcohol or using controlled substances;
- ride at excessive rates of speed;
- ride the ATV on a paved road.

The Injury Survey data show that 31% of investigated ATV accidents to children and adults involved carrying passengers. The CPSC Engineering Analysis indicates that the presence of a passenger frequently inhibits the movement and

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[2/] In all comparisons throughout this section, height, weight, and days ridden are held constant at their mean values, and no modifications to the ATV and no work related usage are assumed.

actions of the driver. This makes the ATV more difficult to control particularly during turns and on rough terrain. Medical Analysis indicates that excessive speed was involved in 30% of the fatal accidents to children and adults that were investigated. Operating the ATV on paved roads was found to be involved in 9.7% of the Injury Survey accidents to children and adults. The subsequent Epidemiological Hazard Analysis revealed that, among operators over 16 years of age, 14% of reports on all accidents with injuries mentioned alcohol consumption by the operator. Thirty percent (30%) of reports on all fatal accidents had a mention of alcohol in the reports.

While not directly causing the accidents investigated, another area where poor judgment was critical in determining the severity of these accidents involved the decision by the ATV operator not to wear protective equipment or clothing. A medical evaluation of a non-statistical sample of in-depth investigations of ATV accidents has shown clearly the result of not using protective equipment. This is most critically apparent in the failure to use well-constructed, well-fitted helmets. Approximately 21 percent of occupants in the fatal accident sample subjected to medical review and 35 percent of the occupants in non-fatal accidents wore helmets. Many of the helmets worn were of an inexpensive variety, which performed poorly and provided low levels of protection. Others were very poorly fitted, typically too large. Twenty-five percent (25%) of those who died from head injuries probably would not have died if they had been wearing proper helmets, according to the Medical Director.

From the multiple regression analysis, EC staff does not have a direct measure of risk taking, for example, operating the ATV beyond the margin of the operator's ability to handle it. However, it is well known that young males take more risks than others; this is reflected, for example, in automobile accident rates. This pattern is one of the strongest in our data as well. For a 20-year-old experienced male on a 3-wheeled 200cc ATV, the probability of an accident is 3.6%; for a 40-year-old male in identical circumstances, the probability is 2.2%, and for a 20-year-old female the probability is 1.4%. There is no reason to expect 20-year-old males to be physically or mentally less competent than either 20-year-old females or than 40-year-old males, so the best explanation for these differences is the degree of risk taking.

ATV Characteristics

The ES staff has determined that handling characteristics of ATVs, and more particularly three-wheelers, are unique and complex. The operator must impart two separate and quite different commands to execute a turn, by executing lean and steer angles of motion. Rather substantial amounts of both angles are required to execute a turn. The single largest source of these command requirements is presented by the solid axle connecting the two widely spaced and highly-frictional rear wheels. The wheels impart a large, straight-ahead directional stability to the ATV which must be overcome for the vehicle to respond to steer commands to the front wheel(s). To overcome this directional inertia, the operator must lean the vehicle toward the outside of the turn.

These unique and complex handling characteristics require a relatively high degree of skill as well as constant attentiveness to operate the ATV safely. The control limits of ATVs may readily be exceeded within the range of normal operating conditions. Seventy-four percent (74%) of three-wheeled ATV accidents initiated with the ATV tipping or overturning compared to fifty-nine percent (59%) for four-wheeled ATVs. This is a statistically significant difference. The stability characteristics of four-wheelers are always higher than those for comparable three-wheelers.

Larger engine sizes are positively associated with accidents. In general, the performance capabilities of an ATV concerning, for example, acceleration, speed and hill climbing, become greater as engine size increases. Thus a larger engine may present a broader operating environment. Analysis by EP staff indicates that the highest risk of injury or death occurs with engine displacements of 225cc or larger for three-wheeled ATVs and engine displacements of 200cc or larger, for four-wheeled ATVs.

For a 20-year-old, experienced male on a 3-wheeled ATV, the probability of an accident goes from 2.3% on a 110cc ATV to 4.6% on a 250cc ATV, this is double the probability. Similar results occur for other operator/ATV combinations. The best explanation for this is that ATVs with larger engines can go faster and thus enable riders to get into situations which they cannot handle. The result also exists for young operators; for an experienced 10-year-old on a 3-wheeled ATV, the probability of an accident is 2.2% on a 50cc engine model. It increases to 5.8% on a 250cc ATV.

Work by the ES staff shows that the dynamic stability of four-wheeled ATVs is better than that of three-wheeled machines. The location of the tip axis (a line between the center of the front and rear tires contact points) gives the four-wheeled ATV a larger track width and provides for a greater moment to resist overturning. Also, braking of a three-wheeled ATV can introduce a sideways overturning moment. This effect is small or non-existent with four-wheeled machines.

ES staff's steering tests demonstrated that the turning control limit for both 3- and 4-wheeled ATVs generally is tipping. Four-wheelers typically have higher tipping limits than three-wheelers. Further, the addition of factors such as operation on a slope and applying the brakes while turning, clearly point to an advantage for four-wheelers. The tipping limit for three-wheelers is dependent upon several dimensional factors of the ATV that can be modified by the designer to improve the turning performance. Under transient turning conditions, the increased stability of the four-wheeler generally is apparent, although the vehicle may suffer in maneuverability.

Increasing the number of wheels from 3 to 4 leads to reductions in accident probabilities, probably because the additional wheel makes the ATV more "forgiving". For the 20 year old experienced male on a 200cc ATV, for example, the probability of an accident with a three-wheeled

ATV is 3.6%; on a 4-wheeled ATV, this probability falls to 1.5%. Of course, it is possible that some of this difference is due to self selection, in that riders with a greater propensity to take risks might select riskier (3-wheeled) ATVs to ride. However, there are also strong differences in handling, as the ES staff has found, and some of the differences must be due to this improved handling.

The Medical Director's analysis of the non-statistical sample of deaths and serious injuries indicates that whether the vehicle was three- or four-wheeled was not relevant once the accident sequence was initiated. On the other hand, as discussed above, the ES staff analysis indicates that four-wheeled ATVs under many conditions are, in general, less likely to overturn. The multiple regression analysis indicates that four-wheeled ATVs are about half as likely to be involved in accidents as three-wheeled ATVs. Thus, the number of wheels is related to the chance of an accident occurring, but not the sequence of events once the accident occurs. This explanation is consistent with the data.

The ES staff found that suspension systems improve handling. The purpose of the suspension system is to absorb energy and to transmit motions in ways that allow the rider a better chance to stay in control. The ATV rider is capable of remaining on the vehicle only within certain limits of force and time. The suspension system reduces the magnitude of the forces and lengthens the time of the reactions. This brings the forces down to a manageable level, and gives the operator more time to respond. This capability can be designed into the vehicle using established engineering principles.

ES analyses and tests indicate that machines with well designed mechanical suspensions, front and rear, significantly reduce the acceleration and pitch response of the ATV in a simulated off-road environment compared to front-only or tire-only suspended ATVs. Front suspension alone provides only a minimal improvement with handling characteristics. However, a poorly designed mechanical suspension may be no better than a tire-only suspension.

In the multiple regression analysis, it was not possible to quantify this result since suspension and engine size were highly correlated with each other; and thus it was impossible to get an independent measure of each characteristic.

Environment

Some accidents occur when the ATV is being ridden in environments which are inappropriate. Nearly 10% of the accidents occur on paved roads, and 8% occur at night. Manufacturers warn that ATVs should not be ridden on paved roads. In a publication entitled, Tips for the ATV Rider, The Great Adventure, the only advice that SVIA provides regarding the operation of ATVs after dark is, "If you are lost at night, do not move around. You will waste valuable fuel that you can use to ride safely in the daylight." (page 18, "Safe Riding Practices") CPSC staff does not have details about these hazard patterns. However, riding the ATV in these environments is, in itself, an indication of risk taking as discussed above. It seems likely that ATV characteristics are not relevant in these circumstances; the relevant interaction is between operators and environment.

Most accidents do not occur in such clearly inappropriate circumstances. In the usual situation, all three interactions are important. For example, a common accident scenario identified by the Medical Director, is the "tripping" phenomenon, in which an operator will often observe an obstacle but not expect it to be a hazard. A more experienced operator or one with better judgment might take more care to avoid such an obstacle; on the other hand, a more stable ATV might not be tripped by the hazard. Similarly, accidents may be caused by speed which is excessive for the particular environment. This same level of speed might not lead to an accident on a different ATV or with a different operator.

A factor which might be called "environmental" is the presence or absence of other people in the vicinity of the accident. For example, eleven percent (11%) of the accidents involve collisions with other vehicles. On the other hand the Medical Director reports ten fatalities where a child or adult was asphyxiated by an ATV coming to rest on the body and ten fatalities where drowning occurred. Presumably, if others had been in the vicinity, they probably would have been able to rescue the victim. Additional instances of fatalities were observed in which the injury was survivable had timely help been available.

A Comprehensive View

A comprehensive way of looking at the rider-machine interaction is to examine probabilities of accidents for different rider-vehicle configurations. In this section, such an examination is provided. There are substantial differences to be found. The variables discussed in footnote 2 are held constant. For the machine, variations in engine size and the number of wheels are examined. For the operator, changes in experience, age, and sex are considered. All results are based on the EC staff's multiple regression analysis.

First, it should be noted that the differences may be quite striking. For an inexperienced 10-year-old male on a 3-wheeled 250cc ATV, the probability of an accident in a given year is 20%. For an experienced 40-year-old female on a 4-wheeled 110cc ATV, the probability of an accident is .2%. Thus, from the highest likely scenario to the lowest there is a hundred-fold difference in accident probability.

The most typical pattern is probably a 20 year old, experienced male on a 3 wheeled 200cc ATV. For such an operator, the probability of an accident is 3.6%. (In what follows, this will be referred to as the"typical scenario.") If the engine size is reduced to 110cc, the probability of an accident falls to 2.3%; if it is increased to 250cc, the probability of an accident rises to 4.6%. If the typical scenario is modified by considering a 4-wheeled ATV, the probability falls from 3.6% to 1.5%. At the 250cc engine size, if the machine is 4 wheeled, the probability is 1.9% compared to 4.6% for a 3-wheeled ATV.

Operator characteristics are now considered, again in comparison with the typical accident scenario, where the probability of an accident is 3.6%. If the operator is inexperienced, the probability of an accident rises to 13.4%. If the operator is female, the probability of an accident in the typical scenario falls to 1.4%. If the male operator is 10 years old, rather than 20, the probability of an accident is 4.6%; if the operator is 40 years old, the probability is 2.2%.

These results illustrate the following points: First, experience is the single most important variable; for the typical scenario, going from less than one year's experience to more than one year's experience reduces the probability of an accident by a factor of 3. Second, males are in general up to about twice as likely as females to have accidents. Third, 10-year-old riders are about twice as likely as 40-year-old drivers to have an accident. Fourth, 250cc ATVs are about twice as likely to be in accidents as 110cc ATVs. Finally, 3-wheeled ATVs are about twice as likely as 4-wheeled ATVs to be in accidents.

STATE ACTIONS TO ADDRESS ATVS

A review of state laws by the Directorate for Field Operations (Tab L) found that less than half of the states have reacted to the increase in injuries and deaths from the use of ATVs through a variety of regulatory and educational options. Most states that have reacted to the problem may have done so on limited or little technical, epidemiological and human factors analysis. The states that regulate ATVs follow no set pattern and the effectiveness of their regulations, in terms of injury reduction, is unknown. The ATV Task Force believes that there is a need to encourage states to develop practical, technically sound and uniform state legislation for operation of ATVs on public lands. The ATV Task Force also believes that appropriate sanctions that include but are not limited to fines, restitution for damages, loss of operator's license, impoundment of the vehicle, loss of vehicle registration, referral to perform a community service, and mandatory referral to and successful completion of an alcohol/drug abuse safe-driving program be included in state regulations.

THE SVIA VOLUNTARY STANDARD

In the May 31, 1985 ANPR, the Commission stated that it was unaware of any existing voluntary standard which would eliminate or adequately reduce the risk of injury. The ANPR referenced performance and handling characteristics of ATVs.

The Specialty Vehicle Institute of America (SVIA) indicated a willingness to begin developing a voluntary standard. On April 26, 1985, Commission staff met with members of the SVIA Voluntary Standards Committee. The SVIA informed the Commission staff that it had initiated steps to develop a voluntary standard and would use the canvass procedures of the American National Standards Institute (ANSI). Commission staff informed SVIA that any voluntary standard on ATVs should include provisions for minimum age recommendations, training and ATV performance characteristics, such as dynamic stability.

Subsequently, after a series of meetings between CPSC staff and a committee of SVIA members, a draft of the first phase of the voluntary standard was sent to members of the ANSI-approved canvass list for comment on August 16, 1985. The topics addressed in this first phase were minimum age recommendations, standardization of controls, labeling, and education and training. Changes were made to the draft by the SVIA voluntary standards committee as a result of comments received from the canvass list and the public. This required reballoting, under ANSI procedures, to approve the revised draft. A reballot was sent to the canvass list on June 23, 1986. CPSC staff provided specific comments and recommendations on the revised draft on September 3, 1986. Considerable time and effort has been devoted to developing the draft standard. However, the staff continues to have concerns about the standard's labeling provisions, age recommendations, controls standardization and training requirements. For example, minimum ATV age recommendations in the current draft are advisory only and are not required. These provisions do not agree with staff suggestions on age recommendations.

During the time that work on the draft voluntary standard took place, CPSC staff provided the results of all completed, publicly available work to the SVIA committee. This included injury data, the results of staff technical analyses that had been completed and recommendations on using human factors considerations in developing the standard. In addition, noting that the development of performance standards for ATVs would require strong technical support, CPSC staff recommended early in the process that SVIA obtain expert engineering assistance.

The SVIA entered into negotiations with a contractor to begin an investigation into the dynamic performance requirements for ATVs in August, 1985. In February, 1986, the contractor began a six-month test program to identify candidate test procedures. The test program was delivered to the manufacturers in July, 1986. The SVIA member manufacturers are reviewing the procedures and then will select minimum level performance requirements in the second phase of the voluntary standard.

Recently, on September 22, 1986, SVIA provided the Commission staff with a partially completed draft dealing with test procedures. CPSC staff saw the first outlines of this work in the Spring of 1985, reviewed the plan for developing these procedures in February of 1986 and witnessed a series of proposed tests, staged by SVIA, in April 1986. At this time CPSC staff does not believe it has sufficient information on these procedures to warrant an assessment of them.

Overall, the provisions in the draft voluntary standard are considered to be inadequate by CPSC staff. These provisions do not include: adequate requirements for specific and uniform labeling of ATVs; adequate minimum age recommendations; adequate requirements for standardized controls on ATVs; and acceptable performance requirements. The staff recognizes that the second phase of the voluntary standard's development is intended by SVIA to address performance and handling characteristics of ATVs. Until that work is completed, however, the standard cannot adequately address the risk of injury associated with ATVs.

Staff is willing to continue working with the SVIA committee, at a fully participatory level, to develop a final voluntary standard for ATVs. It is unlikely that the standard will be completed in a reasonable amount of time and will adequately address ATV hazards unless significant changes are made to incorporate Commission recommendations.

MAJOR FINDINGS, RESPONSES, AND RECOMMENDATIONS OF THE ATV TASK FORCE

This section contains the major findings of the Commission's ATV Task Force.

The ATV Task Force's responses to the findings are discussed below. Where applicable, regulatory and non-regulatory options are considered. Enforcement options are discussed in a RESTRICTED briefing package which will be forwarded to the Commission. Based on the CPSC staff's technical work, the comments received by the Commission on the ANPR, the testimony at the public hearings and the monitoring of the development of the draft ATV voluntary standard, the ATV Task Force recommends that the Commission take the actions listed below. A preliminary description of the costs and benefits of the ATV Task Force recommendation is at Tab M.

The Office of the General Counsel, in a separate memorandum, will evaluate whether there is sufficient evidence available to support each specific regulatory recommendation by substantial evidence. The recommendations included in the report are those of the ATV Task Force based on its analysis of the available data.

The staff recommendations do not necessarily mean that there is substantial evidence available at this time to support any such recommendation. Additional evidence may be required to pursue some of the recommendations.

Operator Characteristics

Finding: TYPICALLY, CHILDREN UNDER 12 YEARS OF AGE ARE UNABLE TO OPERATE ANY SIZE ATV SAFELY. THIS IS BECAUSE THEY LACK PHYSICAL SIZE AND STRENGTH, COGNITIVE ABILITIES, MOTOR SKILLS, AND PERCEPTION.

Response:

The Commission could: (1) request the industry to voluntarily label all child-size ATVs not for use under age 12; (2) proceed with a Notice of Proposed Rulemaking for a warning label standard if the industry will not do it voluntarily; (3) proceed with a Notice of Proposed Rulemaking banning all ATVs intended for use under age 12; (4) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (5) disseminate this information to the public; or (6) encourage the states to enact legislation restricting the use of child-size ATVs on public lands to operators age 12 and older.

The ATV industry has two 1986 model ATVs that are intended for use by children under 12. One of these manufacturers is not marketing a 1987 ATV intended for use by children under 12 years of age. The other manufacturer has yet to introduce its 1987 models. The ATV Task Force believes the industry would be receptive to voluntarily labeling all child-size ATVs indicating that they are not for use under age 12. However, we have concerns about how the information would be presented.

The Commission could proceed with a warning label standard. However, the findings are clear that most children under 12 should-not be on child-size ATVs due to lack of maturity. Therefore, a ban of ATVs intended for use by children under 12 years of age should be considered if the industry will not withdraw them from the market voluntarily.

Recommendations:

Request the ATV industry to voluntarily cease marketing ATVs intended for use by children under the age of twelve (12). If unsuccessful, the Commission should then move to ban All-Terrain Vehicles from the marketplace that are intended for use by children under the age of twelve (12).

Issue a Notice of Proposed Rulemaking for a warning label standard for the current ATVs intended for use by children under the age of fourteen (14). This standard would require labeling stating that these ATVs are not recommended for use by children under twelve (12) because of their lack of maturity and good judgment.

Finding: CHILDREN UNDER SIXTEEN (16) YEARS OF AGE ARE AT GREATER RISK OF INJURY AND DEATH THAN ADULTS WHEN OPERATING ADULT-SIZE ATVs. THIS IS DUE TO POOR JUDGMENT AND FAILURE TO RECOGNIZE AND OPERATE ATVs WITHIN THEIR SKILL LEVELS.

Responses:

The Commission could: (1) request the industry to voluntarily label all adult-size ATVs not for use under the age of 16; (2) proceed with a Notice of Proposed Rulemaking banning all ATVs intended for use by children under the age of 16; (3) proceed with a Notice of Proposed Rulemaking for a warning label standard; (4) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (5) disseminate this information to the public; and (6) encourage the states to enact legislation restricting the use of adult-size ATVs on public lands to operators age 16 or older.

The majority of the ATV industry currently labels adult-size ATVs as not being for use by children under the age of 14. This provision is also in the draft SVIA voluntary standard. The industry's rationale for selecting this age is that some states allow cars and farm equipment to be operated by people at the age of 14. The ATV industry may be receptive to changing the age recommendation for adult-size ATVs. However, the Commission should note the inadequacies that exist with the current labeling practices of the ATV industry.

There are four 1986 model ATVs that the industry is marketing intended for use by children under the age of 14. All the remaining ATVs are intended for adult use with a minimum recommended age of 14. One manufacturer has dropped a child-size model from its ATV line in 1987 and retains a child-size ATV intended for use by children aged 12 years and older. Another manufacturer has a 1987 child-size ATV intended for use by children aged 12 and older. Still another manufacturer has yet to introduce a 1987 model line. If the Commission were to ban ATVs intended for use by children under the age of 16, there would be no child-size ATVs in the market. The majority of the ATV Task Force believes that children older than 12 years are capable of operating child-size ATVs. However, the Commission should be aware that children aged 12-15 years may be too large for the currently available child-size ATVs.

This finding could be translated into a warning statement in a Notice of Proposed Rulemaking. The ATV Task Force does not believe that ATV manufacturers will voluntarily label ATVs with this warning because it may decrease sales. The Commission could require manufacturers to provide this finding to consumers. However, this approach may not be as effective as a warning label standard. The Commission could immediately disseminate this information to the public.

The ATV Task Force recognizes a role for state government involvement. Since less than half of the states set a minimum user age for ATV operation and these states have reacted to the problem based on limited or little technical information, the ATV Task Force believes states would be receptive to implementing minimum age legislation based on this CPSC staff finding.

Recommendation:

Issue a Notice of Proposed Rulemaking for a warning label standard for adult-size ATVs. This standard would require labeling stating that these ATVs are not recommended for use by children under sixteen (16) because they are at a greater risk of injury and death than adults due to deficiencies in judgment and failure to recognize and operate within their skill levels.

Finding: THE RISK OF INJURY DECLINES SIGNIFICANTLY WITH ATV RIDING EXPERIENCE.

Responses:

The strong negative relationship between experience and the risk of injury suggests formal "hands on" training could be an important first step in reducing ATV injuries. The Commission could: (1) request the industry to provide training to ATV operators; (2) proceed with a Notice of Proposed Rulemaking for a training standard; (3) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide training and other information to consumers; (4) disseminate this information to the public; and (5) encourage the states to enact legislation requiring operators to take "hands on" training and obtain a certificate to operate ATVs on public land.

The ATV Task Force has requested that the industry provide free training for purchasers of ATVs. The industry has declined to do so. Training is available only after the payment of a fee. In addition, the demand for training is low. The industry is working on a marketing plan to increase the demand. It is unlikely that training will be undertaken voluntarily by consumers, whether provided free by manufacturers or if the Commission required information about the importance of training and experience be given to consumers.

There is a clear need for a training requirement. The Commission could mandate a training standard. Several states require training to obtain a certificate to operate on public lands. The ATV Task Force believes that many states would be receptive to this approach.

Recommendation:

Issue a Notice of Proposed Rulemaking for a warning label standard for ATVs. This standard would require labeling stating that ATVs have unique handling qualities and that "hands-on" training of the operator is necessary to reduce the risk of injury and death. Direct the Commission staff to develop a strong information and education campaign in Fiscal Year 1987. Direct the Commission staff to work with the states and other Federal agencies to encourage the development of practical, technically sound and uniform state legislation for operation of ATVs on public lands.

Finding: THIRTY PERCENT (30%) OF ALL FATAL ATV ACCIDENTS WERE ASSOCIATED WITH ALCOHOL USE. FOURTEEN PERCENT (14%) OF REPORTED ACCIDENTS WITH INJURIES INVOLVING OPERATORS OVER 16 YEARS OF AGE REFERENCED ALCOHOL CONSUMPTION BY THE OPERATOR.

Response:

The Commission could: (1) request the industry to voluntarily label ATVs with this information; (2) proceed with a Notice of Proposed Rulemaking for a warning standard; (3) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (4) disseminate this information to the public; or (5) encourage states to enact legislation.

Alcohol consumption is a practice that is generally warned against when operating a vehicle of any type. The ATV Task Force believes that state legislation which includes strong penalties such as fines and confiscation of the vehicle is warranted when an operator is found to be using alcohol or other controlled substances.

Recommendation:

Direct the Commission staff to work with the states and other Federal agencies to encourage the development of practical, technically sound and uniform state legislation for operation of ATVs on public lands.

Finding: THIRTY-ONE PERCENT (31%) OF THE ATVs INVOLVED IN ACCIDENTS WERE CARRYING PASSENGERS.

Response:

The Commission could: (1) request the industry to voluntarily label ATVs with this information; (2) proceed with a Notice of Proposed Rulemaking for a warning standard; (3) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (4) disseminate this information to the public; or (5) encourage states to enact legislation barring passengers on ATVs operated on public lands.

Many of the ATV manufacturers already provide this label on the vehicle. However, it is not adequately presented, as previously discussed. A reasonable strategy would be for manufacturers to voluntarily strengthen their labels, for the Commission to disseminate this information to the public and for the Commission to encourage state legislation.

Recommendation:

Intervene in the development of the ATV voluntary standard by formally requesting that CPSC staff comments be incorporated into the first phase of the voluntary standard. Direct the Commission staff to develop a strong information and education campaign in Fiscal Year 1987. Direct Commission staff to work with the states and other Federal agencies to encourage the development of practical, technically sound, and uniform state legislation for operation of ATVs on public lands.

Finding: WELL-CONSTRUCTED, WELL-FITTED HELMETS COULD SUBSTANTIALLY REDUCE THE NUMBER OF FATAL HEAD INJURIES TO ATV OPERATORS.

Response:

The Commission could: (1) request the industry to voluntarily label ATVs with this information; (2) proceed with a Notice of Proposed Rulemaking for a warning standard; (3) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (4) disseminate this information to the public, or (5) encourage states to enact legislation requiring operators to wear helmets while riding on public lands.

Many manufacturers currently label their ATVs recommending the use of helmets and other protective equipment. The limitations of their labels have been discussed.

This issue has typically been left to the states to enact legislation. The Commission could assist the states by disseminating this information.

Recommendation:

Direct the Commission staff to develop a strong information and education campaign in Fiscal Year 1987. Direct the Commission staff to develop point-of-sale information in cooperation with the ATV industry. Direct the Commission staff to work with the states and other Federal agencies to encourage the development of practical, technically sound, and uniform state legislation for operation of ATVs on public lands.

ATV Factors

Findings: SEVENTY-FOUR PERCENT (74%) OF THREE-WHEELED ATV ACCIDENTS INVOLVED TIPPING OR OVERTURNING COMPARED TO FIFTY-NINE PERCENT (59%) FOR FOUR-WHEELED ATV ACCIDENTS.

THE DYNAMIC STABILITY OF FOUR-WHEELED ATVs IS BETTER THAN THAT FOR THREE-WHEELED ATVs.

Response:

The Commission could: (1) participate with the industry to develop performance requirements for the voluntary standard; (2) continue technical work to develop performance requirements for a Notice of Proposed Rulemaking; (3) proceed with a Notice of Proposed Rulemaking to ban three-wheeled ATVs; (4) proceed with a Notice of Proposed Rulemaking for a warning label standard; (5) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; (6) disseminate this information to the public; and (7) encourage states to enact legislation banning the use of three-wheeled ATVs on public lands.

At this time, the ATV Task Force cannot demonstrate that a consumer product safety standard is not feasible. Therefore, a ban of three-wheeled ATVs or encouraging states to ban the use of three-wheeled ATVs on public lands is inappropriate.

The ATV Task Force has identified areas where performance requirements can be developed. This could be accomplished in Fiscal Year 1987. The ATV Task Force notes that manufacturers are producing and selling substantially more four-wheel ATVs than three-wheelers. The marketplace may be adjusting to the consumer demand for this feature. Although the market is shifting, the ATV Task Force sees a need to develop performance levels to reduce the burden placed on the operator during riding. The ATV Task Force is not convinced that the SVIA voluntary standard will address this concern in a timely manner.

Recommendations:

Direct the Commission staff to carry out technical work necessary to support issuance of one or more Notice(s) of Proposed Rulemaking to address the performance characteristics of adult-size ATVs. Direct the Commission staff to fully participate in the development of performance requirements for the second phase of the voluntary standard. Direct the staff to disseminate to the public the comparative safety information developed by the ATV Task Force.

Finding: THE HANDLING PERFORMANCE OF AN ATV IS STRONGLY INFLUENCED BY ITS SUSPENSION SYSTEM; A PROPERLY TUNED MECHANICAL SUSPENSION, FOR FRONT AND REAR WHEELS, IS BETTER THAN FRONT-ONLY OR TIRE-ONLY SUSPENDED ATVs.

Response:

The Commission could: (1) participate with the industry to develop performance requirements for the voluntary standard; (2) continue technical work to develop performance requirements for a Notice of Proposed Rulemaking; (3) proceed with a Notice Of Proposed Rulemaking for a warning label standard; (4) proceed with a Notice of Proposed Rulemaking requiring manufacturers to provide this information to consumers; or (5) disseminate this information to the public.

The ATV Task Force has identified areas where performance requirements can be developed. This could be accomplished in Fiscal Year 1987. The ATV Task Force notes that manufacturers are producing and selling more ATVs with front and rear suspensions. The marketplace may be adjusting to the consumer demand for this feature. Although the market is shifting, the ATV Task Force sees a need to develop performance levels to reduce the burden placed on the operator during riding. The ATV Task Force is not convinced that the SVIA voluntary standard will address this concern in a timely manner.

Recommendations:

Direct the Commission staff to carry out technical work necessary to support issuance of one or more Notice(s) of Proposed Rulemaking to address the performance characteristics of adult-size ATVs. Direct the Commission staff to fully participate in the development of performance requirements for the second phase of the voluntary standard. Direct the staff to disseminate to the public the comparative safety information developed by the ATV Task Force.

OTHER SIGNIFICANT INFORMATION

In addition to the Major Findings provided above, the ATV Task Force is providing the following information:

- Operators when using ATVs for utility purposes are at less risk than when they use them for recreational purposes.
- Males who operate ATVs are about up to twice as likely to have accidents involving injuries as female ATV operators.
- The probability of an ATV accident increases with engine size. A larger engine may present a broader operating environment. This issue may be addressed in future work concerning the performance characteristics of ATVs.

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April 22, 1988

The Honorable Howard C. Nielson
U.S. House of Representatives
Committee on Energy and Commerce
1229 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Nielson:

In response to your letter to me dated April 7, 1988, the four ATV distributors who appeared at the March 16 hearing of the Subcommittee on Commerce, Consumer Protection, and Competitiveness have prepared the attached answers to your 10 questions. The distributors would appreciate it if these answers could be included in the official record of the hearings.

Sincerely,

Lloyd N. Cutler

Lloyd N. Cutler

cc: Honorable James Florio

HOWARD C. NIELSON
THIRD DISTRICT, UTAH

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEES
TELECOMMUNICATIONS AND FINANCE
COMMERCE, CONSUMER PROTECTION,
AND COMPETITIVENESS

COMMITTEE ON GOVERNMENT OPERATIONS
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UTAH TOLL-FREE NUMBER
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April 7, 1988

Dear :

I regret that I did not have the time to ask certain questions of you at the hearing that was held on March 16, 1988 in the Subcommittee on Commerce, Consumer Protection and Competitiveness. I would appreciate your furnishing answers to these questions as soon as possible so that they may be included in the record of that hearing.

1. What do industry studies show is the risk of operating an all-terrain vehicle compared to vehicles such as trail bikes or snowmobiles?

2. What factors must be controlled for, to arrive at a fair comparison of the risks associated with operating all-terrain vehicles compared to the risks associated with operating vehicles such as snowmobiles and trail bikes?

3. Many persons have asserted that three-wheel all-terrain vehicles lack stability. How do three-wheel, all-terrain vehicles compare in stability to trail bikes or bicycles, which have two wheels?

4. Do you believe that offering a refund to past purchasers of three-wheel, all-terrain vehicles, as is contemplated in H.R. 3991, will enhance safety? Why or why not?

5. Do you believe that the advertising by which three-wheel all-terrain vehicles were marketed was misleading or failed to inform the public that there were potential dangers involved in operating these machines? Why or why not?

6. Do you believe that the training program to which you have agreed as part of the Final Consent Decree is a remedy that is available under the Consumer Product Safety Act?

7. How would the training program contemplated by H.R. 3991 differ from the one agreed to by the manufacturers as a part of the Final Consent Decree?

8. How do the notice and warning provisions of H.R. 3991 differ from the notice and warning provisions agreed to by the manufacturers as a part of the Final Consent Decree?

9. Have the manufacturers had an opportunity to review the draft performance standards that the Consumer Product Safety Commission had prepared last January?

- (a) Do you believe that those standards are entirely adequate as they are or will they require work to improve them?
- (b) Could some of those draft standards actually lead to increased danger to riders of all-terrain vehicles?
- (c) Is there an existing three or four wheel all-terrain vehicle that could meet those draft product standards?

10. One of the sanctions contained in H.R. 3991 states that if a consumer product safety rule for all-terrain vehicles cannot be promulgated within one year, then the sales of all all-terrain vehicles designed for use by persons under the age of sixteen are banned. Do you believe that such a measure will lead to increased safety for users of all-terrain vehicles? Why or why not?

Thank you very much for your cooperation and assistance.

Sincerely,

Howard C. Nielson

HOWARD C. NIELSON
Member of Congress

HCN/mjf

cc: Honorable James Florio

1. The figures available to the industry confirm the conclusion reached (through other means) by the CPSC's own Associate Executive Director for Epidemiology, Dr. Robert Verhalen. These figures show that, adjusted for the level of use, the risk of injury associated with the use of ATVs is comparable to that associated with the use of trail bikes and snowmobiles. See Memorandum from Robert D. Verhalen to Nicholas Marchica (June 13, 1986).

2. The level of product usage is the most important factor that must be controlled in order to produce a fair comparison of the risks associated with operating all-terrain vehicles as against other recreational products. To permit meaningful comparisons, the absolute number of injuries associated with ATVs, trail bikes, and dirt bikes must be adjusted to reflect usage patterns. Trail bikes are ridden predominantly during the summer months, and snowmobiles are ridden only during winter. On the other hand, ATVs are driven throughout the year. Thus when the raw injury statistics are adjusted to reflect the higher level of usage associated with ATVs, it becomes clear that the relative risk of injury is comparable for all three products.

3. All vehicle designs represent a balance among various factors including maneuverability, controllability, and stability. Bicycles, trail bikes, three-wheel ATVs, and four-wheel

ATVs represent different designs to accomplish different objectives. A bicycle is clearly more maneuverable but less stable than a vehicle with three or four wheels, but each product is designed for quite different purposes, and comparisons are therefore likely to be misleading.

4. The ATV distributors do not believe that a refund offered to past purchasers of three-wheel ATVs would be an effective way to enhance safety. For that reason, among others, the industry opposes H.R. 3991. The distributors believe that the vehicle itself is safe when operated properly, and that the measures provided by the Final Consent Decree recently negotiated between the ATV industry and the CPSC are much more likely than a recall to be effective in promoting safe riding by consumers.

5. The ATV distributors believe that they have advertised (and provided additional information for consumers regarding) three-wheel ATVs in an accurate and informative manner. ATVs are not only recreational products that many people find enjoyable and useful in pursuing various outdoor activities; they also fulfill important utilitarian functions for farmers, government agencies and others. Advertisements for ATVs, like advertisements for all products, stress the attractive features of ATVs and the ways in which they can be used safely and enjoyably. Although misuse of the vehicles or operator error can cause accidents, ATVs are no different in this regard than most

other products that can be dangerous if misused. Although the industry has sponsored widespread safety awareness programs over the years, the distributors are unaware of any basis for requiring every advertisement to stress the risks associated with the misuse of a product rather than the benefits associated with its proper use.

6. The distributors do not believe that training is a remedy authorized either under the Commission's recall or rulemaking authority or under Section 12 of the CPSA. Section 15, which is an adjudicative remedy, is specifically limited to recalls. Sections 7 and 8, which deal with the Commission's authority to promulgate prospective rules, are limited to product performance and warning requirements and bans, respectively. And, although Section 12 is broadly worded in some respects, in discussing specific remedies it speaks only of substantive remedies, such as recall and performance standards, that are within the Commission's recall and rulemaking authority. Neither Section 12 nor its legislative history provides any support for the view that Section 12, which was designed to be an emergency mechanism, could be used to authorize permanent prospective remedies, such as training, that the Commission itself could not grant.

Neither do there appear to be legal precedents in the common law cases for requiring manufacturers to provide hands-on training to customers, nor do there appear to be any analogous regulatory schemes that impose such obligations on a manufacturer.

7. The training program contemplated by H.R. 3991 would offer free training to all present and past purchasers. The FCD requires the offer of free hands-on training to all consumers who purchased a new ATV after December 30, 1986 and their immediate family members. Special instruction would be provided for the younger rider. Consumers who purchased their ATV before December 30, 1986 could still take the training course upon payment of a nominal fee. Also, all purchasers of new ATVs after the date of court approval of the FCD would receive a substantial financial incentive (a $100 savings bond, $50 cash, or a merchandise certificate) to take the training.

8. H.R. 3991, in its Section 3(1)(A)(ii), requires each manufacturer to "provide notice, by warning stickers affixed to the vehicle and other appropriate means, to purchasers (including, to the extent feasible, prior purchasers) of the risk of injury or death presented by the vehicles, especially to children." Section 3(1)(C) requires that "retail dealers of all terrain vehicles [must] provide purchasers safety information respecting the operation of the vehicles." However, H.R. 3991 as drafted does not set forth the precise terms of the notice and warning provisions it would require. Presumably, these matters would be left to the CPSC to promulgate through the usual processes.

For this reason, we cannot say how any requirements that the CPSC might subsequently promulgate would differ from the provisions of the Final Consent Decree. However, we can say that the Decree does specify in extraordinary detail the content, language comprehension level, format, color, letter typeface and size, durability and placement of revised labels to be affixed to all new vehicles and mailed to all known past purchasers. The labels agreed upon by the distributors and the CPSC represent the combined consideration not only of the parties, but also of outside expert advisers, and will be tested to assure that they are understandable prior to release to the public. The Decree provides in similar detail for supplements to owner's manuals, and for revisions in future manuals, to provide consumers with revised safety information.

The Decree also has a variety of provisions for point-of-purchase safety materials. It specifies that hang tags for each vehicle will be prepared, consistent with the testing program noted above. The distributors will also prepare a new safety video, with a script reviewed by the CPSC, for viewing at the dealership. An ATV safety alert with specified warnings to operators will be mailed to all known past purchasers. Finally, the Decree requires that the ATV safety alert be printed on posters approximately four feet by four feet, and that these posters be prominently and permanently displayed at all dealerships. All of these various safety materials, and any subsequent revisions or modifications in them, are subject to CPSC review. In short, the distributors believe that the notice and warning provisions provided in the Decree are fully responsive to congressional concerns.

9. The manufacturers are in the process of reviewing in detail the voluntary standards proposal from the CPSC. As the proposal itself indicates, major sections dealing with, among other things, such important performance matters as suspension, transient steering, and tire performance, have not been included in the proposal because they are awaiting completion of further study by the CPSC and its contractors. Also, our review of the standards proposal has been complicated by the absence of any accompanying statement of rationale for the technical components of the proposal. We have asked the CPSC to supply such a rationale.

For the reasons expressed above, we are not yet in a position to address definitively the adequacy of the proposal, nor exactly how it would affect existing ATVs. One general area we will need to explore, of course, as properly noted in your request and in the District of Columbia Circuit's recent opinion in the X-Car case, is the question of safety trade-offs -- that is, whether engineering proposals which purport to improve safety in one area may in fact diminish safety in other respects. See United States v. General Motors Corp., 841 F.2d 400 (D.C. Cir. 1988).

10. The proposal in H.R. 3991, to ban ATVs designed for persons under 16 if a consumer product safety rule is not promulgated within one year, ignores three critical facts. First, the Government's Section 12 complaint did not seek recall or banning of so-called youth- or child-sized ATVs. In fact, as the Government's recent memorandum to the District Court states, "The CPSC, based on a thorough analysis of the evidence and on expert advice, did not request that the Department seek a ban on the marketing of all ATVs for use by children." Mem. of the United States, Apr. 12, 1988, Appendix, pp. 3-4.

Second, the CPSC's injury analyses have shown that children riding appropriately-sized ATVs are not at significant risk. For example, the CPSC staff report found that approximately 96% of all children under age 12 involved in accidents were operating ATVs designed for older persons. And the CPSC staff testified before the Commission that there "simply were not very many injuries" to children on the smaller-sized ATVs.

Third, the CPSC staff report also concluded that if these ATVs were eliminated, there could well be an increased overall risk to children because more children likely would ride the larger-sized ATVs where, according to the CPSC, they are at greater risk. Therefore, H.R. 3991's banning proposal not only fails to recognize pertinent CPSC data, but may well increase the risk that children will ride mismatched vehicles.